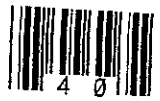




Cheri Brunvand-Summit County Recorder 8/19/2005 14:57 DF:



DECLARATION  
OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
SUN GATE CONDOMINIUMS

# SUN GATE CONDOMINIUMS

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## **Declaration of Covenants, Conditions & Restrictions for**

### **SUN GATE CONDOMINIUMS**

#### **DECLARATION**

**THIS DECLARATION** is made this 18<sup>th</sup> day of August, 2005 by West Frisco Gateway Center, LLC., a Colorado Limited Liability Company (hereinafter referred to as "Declarant").

**WHEREAS**, Declarant is the owner in fee simple of Tract E, West Frisco Gateway Center, County of Summit, State of Colorado, located at the corner of Main Street and Creekside Drive, Town of Frisco, Colorado, commonly known as the West Frisco Gateway Center (which property, together with all easements benefiting the same and other appurtenances thereto is sometimes hereinafter referred to as the "Property"). The Sun Gate Condominiums are eight condominium units located within a development consisting of six "mixed use" (commercial & residential) Planned Area Developments (PAD's) on two of those PAD's. The obligations, duties, powers and authority as to conduct, restrictions and maintenance of all owners of the PAD's are governed by the West Frisco Gateway Center Master Association. This present document is a Declaration for the Sun Gate Condominium only. The owners of the condominium airspace units within the Sun Gate Condominiums are herein referred to as "Owner" or owners. This Declaration of Covenants, Conditions & Restrictions applies to the real property known as:

**Building Sites R300 and R304, West Frisco Gateway Center  
a/k/a/ 300 and 304 Streamside Lane, Frisco, Colorado 80443  
and associated Subsidiary Common Elements and Subsidiary  
Limited Common Elements.**

**WHEREAS**, Declarant has caused to be created under the laws of the State of Colorado "West Frisco Gateway Center Master Association, Inc.", a Colorado non-profit corporation (the "Master Association"), for the purpose of exercising the functions of a Master Association as further described in the Declarations of Covenants, Conditions and Restrictions originally filed in Summit County, Colorado under reception number 702679-40 dated 11-20-2002 and Amended and Restated Declarations filed in Summit County, Colorado under reception number 795369 dated 7-21-2005.

**WHEREAS**, Declarant desires to establish on a designated area of the West Frisco Gateway Center, a Residential Condominium Project consisting of condominium units designated for separate ownership and Common Elements designated for ownership in common by the owners of those condominium units known as the Sun Gate Condominiums.

**NOW, THEREFORE**, pursuant to and in furtherance of the foregoing premises, West Frisco Gateway Center, LLC., a Colorado Limited Liability Company does hereby establish and impose each of the following grants, easements, covenants, conditions and provisions of this Declaration to govern certain aspects of the future development, use, occupancy, maintenance and enjoyment of the Property, and the Project described herein:

**Building Site R300 and R304, West Frisco Gateway Center  
a/k/a/ 300 and 304 Streamside Lane, Frisco, Colorado 80443  
and associated Subsidiary Common Elements and Subsidiary  
Limited Common Elements.**

## **ARTICLE I**

### **SUBMISSION**

**Section 1.1. Submission of Real Estate.** Declarant hereby declares that all of the Property shall be sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real estate and be binding on all parties having any right, title or interest in the real estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof. Additionally, Declarant hereby submits the real estate to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act, as of the date immediately prior to repeal, shall remain applicable.

**Section 1.2 Compliance** Each Owner, Permittee and Security Holder and all parties claiming under them will take and hold their right, title and interest in any Unit subject to all of the covenants and conditions of the Act, this Declaration, the Bylaws, the Master Declaration and the Bylaws of the Master Association. Each Owner, Permittee and Security Holder will comply with all the applicable provisions of this Declaration, the Bylaws and Rules and Regulations, the Master Declaration and Bylaws and Rules and Regulations of the Master Association, as those documents may be amended from time to time. Each Owner, Permittee and Security Holder will comply with all applicable provisions of the Act.

## **ARTICLE II**

### **NAME, DIVISION INTO UNITS**

**Section 2.1. Name.** The name of the project is Sun Gate Condominiums. The Condominiums are located in Summit County, Colorado.

**Section 2.2. Association.** The name of the association is Sun Gate Condominium Association, Inc.

**Section 2.3. Number of Units.** The total number of Units in the Project is Eight, all of which are Residential Units with assigned covered parking spaces per Unit.

**Section 2.4. Identification of Units.** The identification number of each Unit is shown on the Condominium Map ("Map") depicting the unit of airspace on the Property recorded or to be recorded in the real property records of Summit County, Colorado and such amended, additional or supplemental maps and/or plats as may be filed for the Property.

### **ARTICLE III DEFINITIONS**

**Section 3. 1. Definitions.** Each capitalized term not otherwise defined in this Declaration or in the Plat or Map shall have the meaning specified or used in the Act.

**A. "Allocated Interests"** means each Unit's interest in the Sun Gate Condominium Common Elements ("Subsidiary Common Elements" or "SCE"), share of Sun Gate Condominium Common Expenses ("Subsidiary Common Expenses") and voting rights as set forth in Exhibit "A", attached hereto and made a part hereof

**B. "Act"** means the Colorado Common Interest Ownership Act, 38-33-101, et. seq., Colorado Revised Statutes, as it may be amended from time to time. Specific references to one or more portions of the Act in this Declaration do not imply this entire document and the Condominiums are not covered by the Act.

**C. "Subsidiary Association"** or "the Association" means. The Sun Gate Condominium Association formed under this Declaration.

**D. "Subsidiary Common Elements"** means those common elements that are specific to the Sun Gate Condominium Buildings ("SCE"). These include but are not limited to the internal common elements of the residential condominium buildings.

**E. "Subsidiary Common Expenses"** means those common expenses that are specific to the Sun Gate Condominium Buildings.

**F. "Subsidiary Limited Common Elements"** means those limited common elements that are specific to the Sun Gate Condominium Buildings ("SCE").

**G. "Association Documents"** or "Governing Documents" means this Declaration, the Articles, the Bylaws, Rules and Regulations of the Sun Gate Association and any procedures, rules, regulations, or policies adopted under such documents by the Master Association, the Sun Gate Association and the Master Association Maps and the Sun Gate Condominium Map.

**H. "Board"** means the Executive Board (Board of Directors) of the Association.

**I. "Common Expenses"** means any expenses required to maintain and improve the elements that are shared by all owners with an undivided interest. Common Expenses may be either Subsidiary Common Expenses to maintain the Subsidiary Common Elements that pertain to Sun Gate Condominiums, or Master Common Expenses to maintain Master Common Elements that pertain to the Master Association.



**J. "Condominium Unit" or "Unit":** means the fee simple interest in and to the airspace located on the portion of the Property depicted on the Map for the Residential Spaces. The boundaries of the Unit shall be the walls, floors and ceilings as specifically depicted in the Map together with the undivided interest in the Subsidiary Common Elements and any Subsidiary Common Elements created pursuant to the applicable Declaration and all Easements, rights licenses and appurtenances allocated or made appurtenant to the Unit pursuant to this Declaration.

**K. "Central Mechanical Equipment"** means all plumbing, gas service, heating, electrical, telecommunications, television, and any other mechanical equipment in the Subsidiary Common Elements that serve Units.

**L. "Exclusive Expenses"** refers to the expense of electricity, gas or other expense if metered, measured or billed to a single Unit and any other expense belonging exclusively to one Unit as determined by the Executive Board.

**M. "First Mortgage"** means any Deed of Trust or Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

**N. "First Mortgagee"** means any person named as a mortgagee or beneficiary in any First Mortgage or First Deed of Trust, or any successor to the interest of any such person under such First Deed of Trust or First Mortgage.

**O. "Master Association"** means the Master Association for the West Frisco Gateway Center, a Colorado nonprofit corporation, formed pursuant to the Master Declaration.

**M. "Master Common Elements"** means the common elements created pursuant to the previously recorded Master Declaration for the general use of all owners with an undivided interest as assigned to the owners of the PAD's. These master common elements may be abbreviated "MCE". These master common elements include but are not limited to the grounds immediately adjacent to the buildings in the PAD's to be landscaped and controlled by the Master Association. Those common elements assigned to the Sun Gate Condominiums by the West Frisco Gateway Master Declaration and Master Association shall be called Subsidiary Common Elements, which may be abbreviated on the Condominium Map as "SCE". Those Subsidiary Common Elements include but are not limited to the internal common elements of the residential buildings.

**N. "Limited Common Elements"** means the limited common elements created which are appurtenant to certain PAD's or Units. If a limited common element is created pursuant to this Declaration and the Condominium Map which are appurtenant to certain units for the limit use by that unit it is an Subsidiary Limited Common Element("SLCE"). If the Limited Common Element is only as assigned by the West Frisco Gateway Master Declaration and Master Association, it is a Master Limited Common Element which may be abbreviated on the Condominium Map as "MLCE".

**O. "Master Project"** means the West Frisco Gateway, a common interest community as defined by the Colorado Common Ownership Interest Act, C.R.S. 38-33.3 101 et seq. created by the Master Declaration which is commonly known as the West Frisco Gateway Center. The Master Project includes the Land, the Access Easement, and any other easements contained in the Master Declaration.

**P. "Master Declaration"** means the Master Declaration for West Frisco Gateway Center that was Recorded on the Master Condominium Project on \_\_\_\_\_ (date) and as such Master Condominium Declaration may be amended from time to time pursuant to its terms.

**Q. "Manager or Managing Agent"** 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. Initially, the Manager shall be Western Slope Mangement, Inc.

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

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

**T. "Parking"** All parking spaces, whether covered or uncovered, shall be part of the Common Elements subject to regulation by the Association. Covered parking spaces are assigned by the Residential Condominium Map. The identification and location of such other parking shall be at the discretion of the Master Association.

**U. "Permittee"** mean a Person, other than an Owner, rightfully present on or in rightful possession of a Unit or Common element, or a portion of a Unit or Common Element; including, without limitation, (a) a tenant of an Owner of a Unit or Common Element; or (b) an agent, employee, customer, contractor, licenses, guest or invitee of an Owner, the Association, or a tenant of either of them.

**V. "Person"** - means any natural person, trustee, partnership, joint venture, association, corporation, limited liability company, trust, governmental entity, or other entity empowered by law to own real property, or any combination of them.

**W. "Residential Spaces"** has the same meaning as given to "Units" or "Condominium Units" herein below.

**X. "Residential Storage Areas"** means the enclosed storage areas assigned to each unit by the Residential Condominium Map.

**Y. "Square Footage"** means the area defined as floor area of the unit measurement of the volumetric survey defining each unit.

**Z. "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 instrument

recorded 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, but only to the extent allowed by the Act.

**AA. "Subsidiary Association"** means any Commercial or Residential Association formed in the West Frisco Gateway Center. The Sun Gate Condominium Association is the applicable Subsidiary Association under this Declaration.

**BB. "Subsidiary Common Elements"** means all of the "subsidiary common elements" (as defined in the Act) established and described by the Subsidiary Declarations.

**CC. "Subsidiary Limited Common Elements"** means all of the "limited common elements" (as defined in the Act) established and described by the Subsidiary Declarations.

**DD. "Subsidiary Declarations"** means this declaration and any other established under the Master Declaration for the West Frisco Gateway Center.

**EE. "Unit" or "Condominium Unit"** Each Unit shall include the airspace shown on the volumetric survey on the Condominium Map, the portion of any common or individual heating and hot water apparatus exclusively serving the Unit, whether or not located within the boundaries of the Unit. All Central Mechanical Equipment located in each Unit constitutes a part of the Subsidiary Common Elements.

## **ARTICLE IV**

### **THE ASSOCIATION**

**Section 4.1. The Association.** Every Unit Owner shall be a Member of the Sun Gate Condominium Association, Inc. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

**Section 4.2. Transfer of Membership.** A Unit Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit.

**Section 4.3. Class of Membership.** The Association shall have one (1) class of voting membership. Members shall be all Unit Owners, who except as otherwise provided for in this Declaration, shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one unit one vote as listed in Exhibit B. of the declarations. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such 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 Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Unit which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary

of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one vote be cast with respect to any one Unit.

**Section 4.4. Purposes and Powers.** The Sungate Condominiums will be administered in accordance with the provisions of the Colorado Common Interest Ownership Act, C.R.S. 38-33-101 et seq., this Declaration and the Bylaws. All Subsidiary Common Elements and Subsidiary Limited Common Elements are subject to the reasonable supervision, operation, management and control of the Association. The business affairs of the Master Project shall be managed by the Master Association. The Master Association is subject to the Colorado Common Ownership Interest Act, C.R.S. 38-33.3-101 et seq. The Association shall manage, operate, insure, construct, improve, repair, replace, alter renovate and maintain the Common and Limited Common Elements and the Association Property. The Association shall have all of the powers, authority and duties permitted, pursuant to the Act, necessary and proper to manage the business affairs of the Sun Gate Condominiums.

**Section 4.5. Certificate of Identity.** The Association shall, at least once each year, mail to all Unit Owners a certificate setting forth the names and addresses of the then-current Officers and other Directors, and if the Association has appointed a Managing Agent (as defined in the Bylaws), the name and address of such Managing Agent. Any Unit Owner may conclusively rely upon such certificate.

**Section 4.6. Registration by Unit Owners.**

(a) Each Unit Owner shall register his mailing address with the Association, and except for periodic statements and other routine notices, all notices or demands to be served upon a Unit Owner shall be sent by either hand delivery, regular mail or overnight courier, postage prepaid, addressed to such Unit Owner at his registered address. Notwithstanding the foregoing, for a Unit for which there is more than one Unit Owner, the Unit Owners of the Unit must designate one Unit Owner to receive notices and demands from the Association and register the name and mailing address of that Unit Owner (as well as each such other Owner of a Unit) with the Association at or before the time of each annual meeting. Any notice or demand delivered by the Association to the registered Unit Owner for a Unit shall be deemed delivered to all of the Unit Owners with whom such Unit Owner shares the Unit, as the Association shall not be responsible for transfers of ownership or partial ownership interests not properly registered.

(b) Unit Owners shall likewise be obligated to register the name and address of its mortgage lenders (the address of where payments are made), along with account numbers, and will fully cooperate with the Association to identify the identity of the ownership or holding of each such loan.

(c) All notices and demands to be served on the Association or its Executive Board shall be sent by either registered or certified mail, postage prepaid, to the following addresses or such other address or addresses as the Association designates for such purpose in a notice duly mailed to all Unit Owners: (i) the currently serving President or Secretary at the address provided pursuant to Section 4.8 above; and (ii) to the Association's offices: C/O Sun Gate Development, LLC., 4991 South Boston Street, Greenwood Village, CO 80111

**Section 4.7. Manager.** The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. 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.

**Section 4.8. Period of Declarant's Control.** Declarant and any successor of Declarant who takes title to all or part of the Property for the purpose of development and sale of the Property and who is designated as Successor Declarant in a recorded instrument executed by Declarant shall have all the powers reserved in C.R.S. § 38-33-101 et seq. of the Colorado Condominium Act to appoint and rename officers and members of the Executive Board, so long as not inconsistent with the Declarant's control under the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-103 (5). The Period of Declarant's Control shall terminate in the manner and at the times provided for in the Act.

## ARTICLE V

### PROPERTY RIGHTS OF UNIT OWNERS & RESERVATIONS BY DECLARANT

**Section 5.1. Unit Owner's Easement of Enjoyment.** Every Unit Owner has a right and easement of enjoyment in and to an undivided interest in the common elements which shall be appurtenant to and shall pass with the title to every Unit, subject to the provisions contained herein.

**Section 5.2. Recorded Easements.** The Property shall be subject to all easements as shown on any recorded Map or plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements set forth in this Article.

**Section 5.3. Utility Easements.** There is hereby created a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including, but not limited to, gas, telephone, electrical, and cable communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits, and conduits under and over the Property. Such utilities may temporarily be installed above ground during construction, if approved by Declarant.

**Section 5.4. Declarant's Rights Incident to Construction.** To the maximum extent permitted or allowed by the Act, Declarant expressly reserves the right to perform any work, repairs and construction work, and to store materials in secure areas, including on the Common Elements and the future right to control such work and repairs, and the right to access thereto, until completion of the construction of the Units on the Property. All work may be performed by Declarant without the consent or approval of any Unit Owner or Mortgagee. Declarant has such

easements through the common elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct drainage facilities, underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property. Declarant also reserves the right to maintain models, sales and management offices and signs advertising the condominiums which are located on the Property to the maximum extent permitted or allowed by the Act.

**Section 5.5. 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 grant or otherwise, utility and other easements, permits, or licenses over the common elements for purposes including, but not limited to, drives, paths, walkways, drainage, parking areas, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interests of all the Unit Owners and the Association, in order to serve the Unit Owners within the Property.

**Section 5.6. Easement for Ingress and Egress.** Declarant hereby grants as an appurtenance of each Unit a non-exclusive easement of ingress and egress across the common elements to each Unit to assure access from a public road, driveway or parking area to each Unit. The specific means of ingress and egress shall be subject to change as the Declarant or the Association (following the period of Declarant Control) shall from time to time deem necessary so long as a reasonable means of access is always provided.

**Section 5.7. General Maintenance Easement.**

(a) An easement is hereby granted to the Association, and any member of the Executive Board or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under each condominium unit and a right to make such use of the condominium as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon any Unit for purpose of performing maintenance to the common elements.

(b) An easement has also been granted for maintenance of both the Subsidiary Common Elements and the Subsidiary Limited Common Elements.

**Section 5.8. Easements for Encroachments.** There shall be an easement for the encroachment of any portion of any unit that encroaches on another unit or common area due to in exact measurement or mechanical necessity, including but not limited to those encroachments permitted by the provisions of C.R.S. § 38-33.3-214 which shall apply and provide easements for encroachments.

**Section 5.9. Association as Attorney-in-Fact.** Each Unit Owner, by acceptance of a deed or other conveyance vesting in the Unit Owner an interest in a Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution as the Unit Owner's name, place and stead to deal with Unit Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Unit Owner and to take any other action which the Association or Declarant may consider necessary or

advisable to give effect to the provisions of this Section and this Declaration generally. If requested to do so by the Association or Declarant, each Unit Owner shall execute and deliver a written, acknowledged instrument confirming such appointment. No Unit Owner shall have any rights against the Association or Declarant or any of their officers or directors with respect thereto except in the case of fraud or gross negligence.

**Section 5.10. Delegation of Use.** Any Unit Owner may delegate his right of enjoyment to the common elements to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Governing Documents.

**Section 5.11. Inseparability.** Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Unit and improvements thereon shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance respectively of the entire Unit, including each easement, license, and all other appurtenant rights created by this Declaration.

**Section 5.12. Partition or Subdivision.** No Unit Owner, group of Unit Owners or the Association shall bring any action for partition or division of the Common Elements ( assigned to as either Master or Association) or Limited Common Elements. Notwithstanding the foregoing, the Units as described in the Condominium Map and at Exhibit "N" hereto may be combined or partitioned by the Declarant (or the Association following the period of Declarant Control); in accordance with the Act, provided, however, except for Unit 204, no single Unit will be less than 350 square feet Of Gross Usable Area.

**Section 5.13. Rental/Leasing.** A Unit Owner shall have the right to rent or lease his Unit upon such terms and conditions as the Unit Owner may deem advisable but in accordance with the Association Documents, provided, however, that (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of the Governing Documents, (ii) a Unit may be leased only for the uses provided in this Declaration, (iii) any failure of a tenant or lessee to comply with the terms of the Governing Documents shall be a default under the lease enforceable by the Association.

**Section 5.14. Limitations on Special Declarant Rights.** Unless sooner terminated by a recorded instrument signed by the Declarant, any right of the Declarant may be executed by the Declarant for the period of time specified in the Act.

## ARTICLE VI

### MAINTENANCE AND LANDSCAPING

**Section 6. 1. Maintenance of Units.** Except for the maintenance obligations assessed or assumed by the Association as provided below, each Unit Owner shall be solely responsible for all interior maintenance and repair of his Unit including all fixtures, utility lines, glass, and equipment located in, on or upon the Unit. Each Unit Owner is required to maintain the Unit in a clean condition of good order and free from trash, and garbage in accordance with the provisions of that Article named Protective Covenants below. No Unit Owner shall unreasonably damage the value of other Units such as by shoddy upkeep of such Unit Owner's Unit.

Each Owner shall at its expense (i) maintain at all times in good and clean condition, and perform all required repairs, replacements or restorations of, its Unit, including, without limitation, all mechanical, electrical and plumbing systems, lines, equipment or components that are located in and exclusively serve the Unit; (ii) perform its responsibilities in a manner that does not unreasonably disturb other Owners or their Permittees; (iii) promptly report to the Association any defect or need for repairs for which the Association is responsible; and comply with any other maintenance responsibility imposed under this Declaration.

**Section 6.2. Subsidiary Common Elements.** The Association shall maintain and repair the Subsidiary Common Elements and Subsidiary Limited Common Elements in such manner as the Association shall determine, subject to assignments and obligations to the Master Association.

**Section 6.3. Central Mechanical Equipment.**

- A. The Association will operate the Central Mechanical Equipment to provide the services and utilities supplied or delivered thereby to all of the Units and the Subsidiary Common Elements. The Association's costs to operate the Central Mechanical Equipment, including the costs of utilities and services not otherwise paid directly by the Owners will be included in the Subsidiary Common Expenses provided that the Association will separately meter or measure such services and utilities to the extent economically feasible.
- B. The Association may install meters or similar measuring devices on some or all of the Central Mechanical Equipment or utility lines to measure the central Mechanical Equipment services or utilities (not otherwise paid directly by the Owners) from and after the date of installation of such meters or measuring devices, the costs of operating or providing the Central Mechanical Equipment or utilities, separately metered or measured pursuant to this paragraph will be divided among the Residential Units based upon usage as measured by the meters or measuring devices and will be assessed against each Unit as a Reimbursable Expense and the portion attributable to the Subsidiary Common Elements will be included in Subsidiary Common Expenses.

**Section 6.4. Authorization for Changes.** No Unit Owner shall construct any structure or improvement or make or suffer any structural or design change, either permanent or temporary and of any type or nature whatsoever to the Common Elements, the Limited Common Elements or construct any addition or improvement whatsoever on his Unit without first obtaining the prior written consent thereto from the Executive Board and the prior written consent of The Town of Frisco.

**Section 6.5. Unit Owner's Failure to Maintain.** In the event that a Unit is not properly maintained by a Unit Owner, then the Association, after ten (10) days prior written notice to the Unit Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements thereon to a condition of good order and repair. All unreimbursed costs shall be a lien upon the



Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with that Article named Assessments below.

## ARTICLE VII

### INSURANCE

**Section 7.1. Insurance on Subsidiary Common Elements.** The Association will obtain and maintain all insurance required to be maintained by the Association under the Act and may obtain such additional insurance as it deems appropriate for the Project. In addition thereto, insurance shall be maintained as follows:

- (a) Workmen's compensation and employers liability insurance and all other similar insurance with respect to employees of the Association in the amounts and the forms now or hereafter required by law.
- (b) Notwithstanding the foregoing insurance requirements, the Association shall not be required to obtain flood insurance.
- (c) 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.

**Section 7.2. Insurance to be Maintained by Unit Owners.** An insurance policy issued to the Association does not obviate the need for unit owners to obtain insurance for their own benefit. Each Unit Owner shall obtain and maintain in effect physical damage and liability insurance for such Unit Owner's benefit, at such Unit Owner's expense, covering the Unit Owner's Unit and improvements, personal property and personal liability. The minimum amount of liability insurance coverage may be specified by the Association. No Unit Owner will obtain separate insurance policies on the Common Elements. The Executive Board shall require a Unit Owner who purchases insurance coverage for the Owner's Unit (other than coverage for the Unit Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any insurance coverages or policies carried by the Association. Upon approval by two thirds of the ownership or the Board of the Association, the Association may purchase a group policy for the above insurance.

**Section 7.3. Managing Agent.** If a Managing Agent for the Association is owned or controlled by the Association or by a majority of the Unit Owners of individual Units, the Association, acting through its Executive Board, may obtain group coverage for furnishings and public liability insurance for each Unit, in which event the Unit Owners shall be assessed their proportionate share of the cost of such Unit, based upon a per square foot of Unit size.

**Section 7.4. Insurance Proceeds.** Any damage or destruction covered by insurance maintained by the Association shall be adjusted with the Association in the manner described in the Act and insurance proceeds for any loss shall be paid in the manner described in the Act. For

the purposes of the disbursement of insurance proceeds under this paragraph 7.4, the Unit Owners shall be considered the "Unit Owners" (as such term is used in the Act) of the Property, and no distinction may be made between the Unit Owners for that purpose.

## **ARTICLE VIII**

### **ASSESSMENTS/BUDGETS**

#### **Section 8.1. Obligations for Assessments.**

(a) All Unit Owners shall be obligated to pay to the Association assessments for Subsidiary Common Element Expenses, Subsidiary Limited Common Element Expenses as allowed by the Act ("Assessments"), and all other charges that the Association is required or permitted to levy or impose on Unit Owners or their respective Condominium Units pursuant to the Act, the Master Association Declaration or other Governing Document.

(b) All Unit Owners shall be obligated to pay to the Association assessments for Subsidiary Common Element Expenses, Subsidiary Limited Common Element Expenses as allowed by the Act ("Assessments"), and all other charges that the Association is required or permitted to levy or impose on Unit Owners or their respective Condominium Units pursuant to the Act, this Declaration, the Master Association or other Governing Document.

(c) The Association may levy and collect Assessments for such periods and in such installments as the Executive Board deems necessary or appropriate.

**Section 8.2. Purpose of Assessments.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Unit Owners and occupants of the Property and for the improvement and maintenance of the Subsidiary Common Elements, Subsidiary Limited Common Elements, and the Association's allocated share of the Master Common Elements and Master Limited Common Elements.

**Section 8.3. Budget.** The Executive Board shall adopt a budget with Assessments sufficient to pay all Subsidiary Common Expenses and the Association's proportional share of the Master Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. Within thirty (30) days after adoption of any proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Unit Owners 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 or other delivery of the summary. Unless at that meeting 67% or more of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

**Section 8.4. Reserves.** The Association or Declarant shall require each buyer of a Unit to make a non-refundable payment to the Association in an amount equal to one-fourth the of the

current cumulative Periodic Assessments for one year for the Unit, which sum shall be held, without interest, by the Association as a reserve fund. The Reserve Fund shall be collected and transferred to the Association at the time of closing of the sale of each Unit, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve a Unit Owner from making payments of Periodic Assessments as the same become due. Upon the transfer of a Unit a Unit Owner shall be entitled to a credit from the Unit Owner's transferee for any unused portion of the Reserve Fund except for original sales by a member of the Declarant or the Developer.

**Section 8.5. Periodic Assessments.** Periodic Assessments for Subsidiary Common Expenses and the Association's allocated share of Master Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Unit Owners, subject to the Budget. Periodic Assessments shall be payable monthly in advance and shall be due on the first day of each month, or such other periods as the Executive Board may determine. The omission or failure of the Association to fix the Periodic 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 Periodic Assessments in excess of the actual expenses incurred in any fiscal year.

**Section 8.6. Apportionment of Periodic Assessments.** Each Unit Owner shall be responsible for that Unit Owner's Unit's share of the Common Expenses including the Association's share of Master Association Expenses .

(a) Any Subsidiary Common Expense associated with the maintenance, repair or replacement of an Subsidiary Limited Common Element will be assessed against the Units to which that Subsidiary Limited Common Element is assigned, pro rata according to the Allocated Interest of such Units.

(b) Any Subsidiary Common Expense or Exclusive Expense benefiting fewer than all of the Units will be assessed exclusively against the Units benefited pro-rata according to the Allocated Interest of such Units.

(c) Any increased insurance costs incurred as a result of the value or use of a particular Unit Owner's residence or the actions of a particular Unit Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Unit Owner.

(d) Any Common Expense, whether Subsidiary or Master Common Expense, caused by the misconduct of any Unit Owner shall be assessed solely against such Unit Owner and/or his Unit.

**Section 8.7. Default Assessments.** All monetary fines assessed against a Unit Owner pursuant to the Association Documents, or any expense of the Association which is the

obligation of a Unit Owner or which is incurred by the Association on behalf of the Unit Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Unit Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Unit Owner subject to such Assessment at least 30 days prior to the due date.

**Section 8.8. Effect of Nonpayment:** Assessment Lien. Any Assessment or Assessment installment, which is not paid within thirty (30) days after its due date, shall be delinquent. If an Assessment installment becomes delinquent, the Association shall have the powers granted by the Act to assess and enforce liens, including, but not limited to suit for collection, public trustee foreclosure or judicial foreclosure together with costs of collection and attorneys' fees.

**Section 8.9. Personal Obligation.** The amount of any Assessment chargeable against any 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 Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment against a Unit Owner for unpaid Assessments, any penalties and interest thereon, the cost and expenses 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.

**Section 8.10. 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 Unit, except as provided in the Section named Subordination of Lien below, shall be jointly and severally liable with the prior Unit Owner or Unit Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorney's fees against such Unit without prejudice to such successor's right to recover from any prior Unit Owner any amounts paid by such successor unless personally assumed. This liability of a successor shall not be personal and shall in any event terminate upon termination of such successor's fee simple interest in the Unit. In addition, any successor shall be entitled to rely on the statement of status of Assessments issued by or on behalf of the Association pursuant to Section 8.13.

**Section 8.11. Subordination of Lien.** The lien of the Assessments provided for in this Declaration shall be subordinate to (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) liens for all sums unpaid for a first mortgage of record, recorded before the date on which the assessment sought to be enforced became delinquent. Provided, however, the Association asserts a priority for 6 months' assessment lien to the maximum extent allowed by C.R.S. 38-33-101 et seq. and C.R.S. § 38-33.3-316. The lien of the Assessments shall be superior, to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. Transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens to the extent required by the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Subsidiary

Common Expense, at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made or due after the sale or transfer.

**Section 8.12. Notice to Mortgagee.** The Association may 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 Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

**Section 8.13 Estoppel Certificates.** After receiving a written request from any Owner, Security Holder or a designee of either of them, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association will furnish to the requesting party, by personal delivery or by certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate executed by an officer of the Association and addressed to the requesting party, stating any then unpaid Assessments due from the requesting Owner or the Owner of the Unit encumbered by the requesting Security Holder's Security for an Obligation, or stating that there are no unpaid Assessments due from such owner, as the case may be. An estoppel certificate furnished by the Association pursuant to this Section 8.13 is binding on the Association, the Board and every Owner. Such Owner's Unit is not subject to a lien for any unpaid Assessments against the Unit to the extent that (a) the lien arises before the date of the certificate and the amount of the lien exceeds any unpaid amounts stated in the certificate, or (b) if the Association does not furnish an estoppel certificate pursuant to this Section 8.13, the unpaid Assessments are due as of the date of the request. The Association may impose a fee for such statement of not to exceed ten (10) times the then federal minimum hourly wage. The statement shall be furnished within fourteen (14) calendar days after the Association's receipt of the request and the required fee and is binding on the Association, the Executive Board and every Unit Owner.

**Section 8.14. Delegation to The Master Association** With the written consent of the Master Association, which may be granted in the sole and absolute discretion of the Master Association, and subject to the requirements and limitations of Section 38-33.3-220 of the Act, the Association may delegate any of its powers and obligations under this Declaration to the Master Association. Any such delegation shall be in the form of a Recorded written agreement signed on behalf of the Association and the Master Association. Such written agreement shall: (i) refer to this Declaration and the Master Declaration by name and give the Recording information for both of them; (ii) specifically identify the power(s) and/or obligation(s) being delegated to the Master Association and the duration of such delegation(s); (iii) acknowledge the Master Association's consent to such delegation(s) and assumption of the power(s) and/or obligation(s) so delegated; (iv) identify any conditions or limitations placed on such delegation(s) and the manner by which such delegation(s) may be terminated; and (v) contain any provisions required by the Act or the Master Declaration. Such written agreement may contain any other provisions that are consistent with the terms of this Declaration, the Master Declaration and the Act.

## ARTICLE IX

### CASUALTY

**Section 9.1. Casualty to Common Elements.** The Association shall respond to any damage to, or the destruction of, any Subsidiary Common Elements in accordance with the terms and conditions of the Act.

**Section 9.2. Casualty to a Unit.** Each Unit Owner shall be responsible for repairing or replacing any damage to or destruction of his Unit.

## ARTICLE X

### CONDEMNATION

**Section 10.1 Taking of Subsidiary Common Elements.** A "Subsidiary Common Element Taking," occurs when all or a part of any Subsidiary Common Element is taken by the exercise of the power of eminent domain or is conveyed in lieu of such exercise. The Board, subject to the limitations and authority imposed by the Master Association, is solely responsible for negotiating, and may negotiate with the condemning authority on behalf of all Owners concerning, the amount of the award for any Subsidiary Common Element Taking, and the Board's acceptance of an award is binding on all owners. If an Subsidiary Common Element Taking occurs, the Association is responsible for restoring the remaining Subsidiary Common Elements as necessary to return them to a safe and lawful condition that does not adversely affect the use or enjoyment of the Condominium Project or detract from the general character or appearance of the Condominium Project. If the net award (net of costs of collection) received by the Association from any Subsidiary Common Element Taking exceeds the amount actually incurred by it in connection with any required restoration of the Subsidiary Common Elements, the Association will pay or credit each Owner with its Unit's Termination Allocation of the excess condemnation award. If the net amount of the award so received is insufficient to effect such restoration, the Board may assess a Special Assessment.

**Section 10.2 Taking of Units.** The exercise of eminent domain with regard to any Unit shall be addressed in the manner prescribed by the applicable Declaration.

## ARTICLE XI

### MORTGAGEE'S RIGHTS

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

**Section 11.1. Approval Requirements.** Unless at least two-thirds (2/3) of the Mortgagees holding First Mortgages against any portion of the Property (based on one vote for each Mortgage owned), and at least two-thirds (2/3) of the Unit Owners (other than Declarant) have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, sell, or transfer all or part of the Association Common Elements (provided, however that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause);

(b) Change the method of determining the obligations, Assessments, dues, or other charges that may be levied against a Unit Owner.

**Section 11.2. Right to Pay Taxes and Charges.** Mortgagees who hold First Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Subsidiary Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

**Section 11.3. Notice of Objection.** Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty (30) days following the receipt of notice (by certified mail or overnight delivery with signed receipt) of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

## **ARTICLE XII**

### **CONVEYANCING AND ENCUMBRANCING**

**Section 12.1 Units.** Any conveyance of a Unit includes an undivided interest in the Subsidiary Common Elements allocated to the Unit under this Declaration regardless of whether the undivided interest is specifically described in the conveyance, such Unit shall be conveyed only in accordance with the provisions of its respective Declaration governing conveyances. A Person who becomes an Owner will promptly notify the Association of its ownership of a Unit. An Owner may encumber its Unit only in accordance with the provisions of its Subsidiary Declaration.

**Section 12.2 Subsidiary Common Elements.** Except as otherwise provided in Article 14, with respect to the termination of the Condominium, the Subsidiary Common Elements or portions of them may be conveyed or subjected to a lien or security interest by the Master Association, with the written approval of Owners of Units to which are allocated 67% of the votes in the Association, including 67% of the votes allocated to Units and 67% of the votes allocated to Units not owned by Declarant. The conveyance or encumbrance does not affect the priority or validity of pre-existing encumbrances.

### **Section 12.3 Transferee Liability.**

(a) General. If any Unit is voluntarily or involuntarily transferred to any Person, the transferee of the Unit (the "Transferee") is liable for all Assessments or Assessment installments against the Unit beginning as of the time of transfer; provided that the Transferee's interest in the Unit is subject to the Association's lien for any unpaid Assessments as of the date of the transfer pursuant to this Declaration.

(b) First Mortgage Foreclosure. Any First Mortgage is subject to the Association's lien, and any First Mortgagee acquiring title to a Condominium through foreclosure of a First Mortgage is liable, for any unpaid Assessments (i) which are delinquent at the time the First Mortgage is Recorded, or (ii) which become due after the First Mortgage is Recorded to the extent of an amount equal to Assessments based on a budget adopted by the Board and ratified by the Owners pursuant to Section 8.1 that would have become due during the six-month period immediately before the Association or any Person holding a lien senior to any part of the Association's lien commences an action or a nonjudicial (Public Trustee) foreclosure either to enforce or extinguish the lien.

(c) Reallocation. Without releasing the transferor from any liability' for any unpaid Assessments, any unpaid portion of an Assessment which is not a lien by operation of Section 12.3(b) is part of the Subsidiary Common Expenses and collectible from all Owners liable for Association Common Expenses, including a Transferee or a First Mortgagee acquiring title to a Unit through foreclosure of a First Mortgage.

## **ARTICLE XIII**

### **AMENDMENT**

**Section 13.1. Amendment.** This Declaration all be amended by an Amendment approved by 67% (sixty-seven percent) vote of the eight units by their owners as allocated. Amendments may not be inconsistent with the Declaration and other Association Documents of the Master Association.

**Section 13.2. Termination.** The Project and this Declaration shall only be terminated in accordance with C.R.S. § 38-33.3-218 .

## **ARTICLE XIV**

### **PROTECTIVE COVENANTS**

**Section 14.1 Administration.** The Residential Condominium Project will be administered in accordance with the provisions of the Act, this Declaration and the Bylaws. All Subsidiary Common Elements and Subsidiary Limited Common Elements are subject to the reasonable supervision, operation, management and control of the Association.

**Section 14.2 Use of Units.** Subject to the rights reserved in this Declaration, each Unit may be used and occupied only for Residential purposes.



(a) Permitted Uses. Except as otherwise provided in this Section 14.2(a) and Section 14.4, each Unit may be occupied and used only for: (i) residential uses and uses incidental to them; (ii) rentals of the entire Unit for residential purposes; and (iii) home occupations permitted by applicable zoning laws, so long as such use is incidental to residential use of the Unit, does not involve use of the Unit by any employee or independent contractor (other than the Owner of the Unit), does not involve regular commercial deliveries to or from the unit other than small packages shipped by an express courier service, does not involve regular visits to the Unit by any customers or prospective customers, does not materially increase the use of any Common Elements, and is not advertised or identified by signage on any directory in the Building. During the Declarant Development Period, Declarant may also use one or more Units owned by Declarant for sales or management offices or for model Units.

(b) Prohibited Uses. Except as expressly provided in Section 14.2(a), no Unit may be used for any commercial, professional, industrial or manufacturing purposes. In addition, no Unit may be leased or used for the creation of any "time share estate" as defined in C.R.S. § 38-33-110 or any other time share, interval ownership, vacation club, or similar estate or interest in the Unit, no matter how described or classified, by which a purchaser, investor, tenant or licensee obtains the right to exclusive use of the Unit on a recurring basis for a certain period of time.

**Section 14.3 Use of Parking Spaces.** Each Parking Space may be used by its Owner or the Owner's Permittee for motor vehicle parking and other uses incidental to or consistent with motor vehicle parking; provided, however, that without the prior written approval of the Board: (i) no Parking Space may be used in such a manner that precludes its use for motor vehicle parking; and (ii) no commercial vans, boats, off-road motorcycles, campers, trailers or other commercial or recreational vehicles of any type may be kept or parked in any Parking Space.

**Section 14.4 Use of Storage Compartments.** Each Storage Compartment may be used by its Owner or the Owner's Permittee for storage of personal property except for paint, chemicals, motor oil or fuel or other materials prohibited by fire authorities or the Association's insurance carrier.

**Section 14.5 Prohibited Uses Generally.** Uses other than permitted uses listed in this Article 14 are prohibited unless the Board is expressly empowered to, and does, approve a particular prohibited use. Where the Board is empowered to approve a particular use or action, the Board may impose reasonable conditions upon the use or action, as it deems necessary to protect the integrity of the Residential Condominium Project and the rights of other Owners. In addition to other uses prohibited by this Article 14, the following uses are prohibited:

a) Insurance Risks. No Unit may be used for any use which would constitute an unusual fire hazard, would result in jeopardizing any insurance maintained on any part of the Residential Condominium Project or would result in any increase in the premium for that insurance; provided, however, that the Board may approve the use if adequate safeguards are undertaken at the Owner's expense and any increase in insurance premiums is allocated to, and paid by, the Owner pursuant to Section 9.2(c)(ii).

(b) Barbecue Grills. No barbecue grills shall be used on Porches, except to the extent allowed by the Rules and Regulations, which, with regard to the use of barbecue grills, shall be no less restrictive than any rules and regulations enacted by a governmental entity or agency having jurisdiction over the Property.

(c) Building Exterior/Porches. Nothing may be installed, attached or otherwise affixed to or on the exterior of the Building, or the railing on any Porch. No landscaping or plant materials shall be placed or installed on any Porch, other than in portable containers that are not affixed to any element of the Porch or the Building. Portable hot tubs not exceeding 150 gallons of capacity may be installed provided the Executive Board approves and a building permit is obtained subsequent to Board approval.

(d) Overloading. No Unit or Subsidiary Common Element may be used for any use beyond the maximum loads the floors of the Building or the Garage are designed to carry. Further, no Unit or Common Element may be used for any use that would place any extraordinary burden on any Common Element, unless the Board gives its prior written consent.

(e) Nuisance. No Unit or Subsidiary Common Element may be used for any use (i) constituting a public or private nuisance; (ii) consisting of the manufacture of any product; or (iii) which causes undue odor, noise, vibration or glare, including, without limitation, the use of any equipment or machine. No audio system in a Unit may be operated in a manner that is audible from within any other Unit.

(f) Violation of Law. No portion of the Residential Condominium Project may be used for any use which violates any law, statute, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Residential Condominium Project, including, without limitation, any of them that regulate or concern hazardous or toxic waste, substances or materials. No Unit Owner or guest shall do anything or keep anything in or on the Property which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation permit or other validly imposed requirement of any governmental body.

**Section 14.6. Improvements Prohibited**. No used or second-hand structure, no building of a temporary character, no mobile home, house trailer, tent, shack, or outbuilding shall be placed or used on the Common Elements, either temporarily or permanently; except those items which are necessary for construction may be used during the period of construction. The placement, appearance and maintenance of such temporary structures may be subject to reasonable rules of the Executive Board governing such matters. All improvements to Residential Spaces must first be approved by the Declarant (during the period of Declarant's control), and the Executive Board and comply with all building and zoning regulations required by the Town of Frisco and the County of Summit.

**Section 14.7. Trash**. No trash, ashes or other refuse or debris may be thrown or dumped on the Property. The burning of refuse out of doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used. Waste

materials, garbage and trash shall be kept in sanitary containers, enclosed and screened from public view, protected from disturbance, and disposed of with reasonable promptness. No containers shall be placed outside of individual units. Trash containers and recycling facilities shall be provided exclusively by the Master Association.

**Section 14.8. Noxious or Offensive Activity.** No noxious, offensive, hazardous or annoying activities shall be carried on upon any part of the Property nor shall anything be done or placed on or in any part of the Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others or in any way violates any applicable regulations or laws, including, but not limited to, those of the Town of Frisco, Colorado. No activity shall be conducted on any part of the Property and no improvements shall be made or constructed on any part of the Property which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Property that is unreasonably loud or annoying. No odor shall be emitted on any part of the Property that is noxious or offensive to others. No light shall be emitted from any part of the Property that is unreasonably bright or causes unreasonable glare.

**Section 14.9 Rules and Regulations.** In addition to the restrictions, conditions and covenants in this Article 14 concerning the use of the Residential Condominium Project, the Board from time to time may promulgate and amend reasonable Rules not in conflict with the Act; this Declaration or the Bylaws: Without limiting the generality of the immediately preceding sentence; the Board may from time to time adopt Rules (i) requiring the Owners to utilize uniform window coverings having such style, size, material, color and other attributes designated by the Board in such Rules; and (ii) regarding landscaping, including permitted materials, maintenance standards and watering standards. The Owners may also be subject to rules and regulations promulgated by the Master Association pursuant to the Master Declaration. In the event the Master Association's rules are in conflict with the Rules and Regulations of the Residential Condominium Project, the Master Association Rules and Regulations shall govern. No Unit Owner and no Unit Owner's tenants or guests shall violate the Rules and Regulations adopted from time to time by the Association, whether relating to the use of Units, the use of Subsidiary Common Elements or Subsidiary Limited Common Elements, or otherwise.

**Section 14.10. Unit Number or Letter.** Each dwelling shall have a Unit number as designated on the Condominium Map with a design and at a location established by the Executive Board.

**Section 14.11. No Unsightliness.** No unsightliness shall be permitted on or in any part of the Property. Without limiting the generality of the foregoing, and in order to create a uniform general appearance, nothing shall be hung or placed upon any of the Subsidiary Common Elements, including areas which are Subsidiary Limited Common Elements, patios, decks, walkways, driveways or in parking areas, and nothing shall be placed on or in windows or doors of Units, which in the opinion of the Executive Board would or might create an unsightly appearance.

**Section 14.12. Pets.** No dogs, cats, customary household birds or other pets, livestock, reptiles or animals of any kind whatsoever may on the Property without the written consent of the Association's Executive Board. One dog or cat per unit shall be allowed by the Executive Board subject to its Rules and Regulations. Such animals as shall be permitted or allowed by action of the Executive Board shall not be kept outside the Unit unless under direct supervision and control of the Unit Owner. Breeding of any animals on the Property is specifically prohibited. Animals or pets permitted or allowed by action of the Executive Board may be kept by a Unit Owner in his or her Unit only, subject to all animal ordinances and rules and regulations promulgated by the Association in regard thereto, and provided that they are not kept for any commercial purposes. A Unit Owner is responsible for any damage caused by such animals. No animals shall be allowed to remain tied or chained to any balconies, decks, patios, walkways, driveways or other part of a Unit or the Property and any such animals so tied or chained may be forthwith removed by the Executive Board or its agents, without notice. No Unit shall house any animal that makes excessive noise, creates noxious odors or leaves unremoved droppings affecting the easement of quiet enjoyment of surrounding Units.

**Section 14.13. Vehicles and Miscellaneous Equipment.** No Unit Owner, guest or tenant shall use the parking spaces for anything other than the parking of licensed, registered cars or light trucks used for daily transportation. No storage of any kind, including, but not limited to boats, trailers, snowmobiles, building materials or personal property will be allowed. The use of common area parking lot spaces is subject to rules and regulations promulgated by the Executive Board.

**Section 14.14. Signs.** No signs; billboards, poster boards, or advertising structure of any kind, including, but not limited to "For Sale", "For Rent", or similar real estate signs, shall be erected or maintained for any purpose whatsoever except such signs as have been approved by the Executive Board pursuant to its regulations, are consistent with the Master Sign Plan for the Project and which do not violate the rules, regulations and ordinances of the Town of Frisco.

**Section 14.15. Trade Names.** No word, name, symbol or combination thereof shall be used to identify for commercial purposes any structure, business, or service located on or conducted in connection with a Unit or the Property, unless the same shall have been first approved in writing by the Executive Board.

**Section 14.16. No Mining, Drilling or Quarrying.** Mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock and earth, shall not be permitted.

**Section 14.17. Unit Owner-Caused Damages.** If, because of the act or neglect of a Unit Owner or such Unit Owner's tenants, guests or family, loss or damage shall be caused to any person or property, including, but not limited to the Property or any Unit herein, such Unit Owner shall be liable and responsible for the same, except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Unit Owner. The amount of such loss or damage may be collected by the Association from such Unit Owner as an assessment against such Unit Owner, by legal proceedings or otherwise and such amount shall be secured by a lien on the Unit of such Unit Owner as provided hereinabove for assessments or other charges.

**Section 14.18. Leases of Units.** All leases of a Condominium Unit shall be in writing and shall be deemed to include a provision that the tenant will recognize and attorn to the Association solely for the purpose of granting it the power to enforce a violation of the provisions of the Association Documents against the tenant, provided the Association gives the Unit Owner and Tenant (if known) notice of its intent to so enforce and a reasonable opportunity to cure the violation directly prior to the commencement of an enforcement action. The liability of a Unit Owner under the Association Documents shall continue, notwithstanding the fact that the Unit Owner may have leased, rented or sublet said Unit, as provided herein. The Executive Board may establish or approve the form of any lease for all or a portion of a lease consistent with the Association Documents and applicable law.

**Section 14.19. Master Keys.** The Association shall maintain a master key system for all entrances, individual entry doors, internal locked doors, storage units, and any other locked doorway or passage within individual units or the Subsidiary Common Elements or Subsidiary Limited Common Elements. The separate master key may be maintained for each building and associated facilities if permitted by the applicable fire authority. Any claims arise from the use, misuse or negligence of the master keys shall be limited to actual economic damages.

**Section 14.20 Executive Board Determination.** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of Article XIV herein shall be made by the Executive Board and shall be final.

## ARTICLE XV

### MANAGEMENT

**Section 15.1. Subsidiary Common Elements.** The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Subsidiary Common Elements and the Limited Common Elements. Without limiting the generality of the foregoing, said obligation shall include the keeping of such Subsidiary Common Elements and Limited Common Elements in first class, clean, attractive, safe and sanitary condition, order and repair, removing from the Subsidiary Common Elements and Limited Common Elements, snow and any other materials which might impair access to the Project; keeping the Project safe, attractive and desirable, and making all necessary or desirable alterations, additions, betterments or improvements to or on the Subsidiary Common Elements and the Limited Common Elements.

**Section 15.2. Other Association Functions.** The Association may undertake any activity, function or service for the benefit of or to further the interests of some or any Owners of Units on a self-supporting, special assessment basis exclusively to those owners. Without limiting the generality of the foregoing, should the Town of Frisco create or develop covered parking adjacent to the Project, Declarant (or the Association following the period of Declarant Control) may join with the Town in such development in accordance with any prior agreement with the Town of Frisco.

**Section 15.3. Professional Management.** The Association may obtain and may pay for the services of a professional Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which the Association contracts. Any agreement for professional management of the Property, or any contract providing for services of the Declarant, may not exceed one (1) year, and must provide for termination by either party with or without cause and without payment of a termination fee on 30 days' written notice.

**Section 15.4. Labor and Services.** The Association (i) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration- and (ii) may arrange with others to furnish power, water, trash collection, security, sewer and other services desired by the Unit Owners.

**Section 15.5. Property of Association.** The Association may pay for, acquire, hold and encumber personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, lessees, each Unit Owner and each Unit Owner's family and guests may use such property. Upon termination of condominium ownership of the Property and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Unit Owners as tenants in common in the same proportions as their respective interests in the Subsidiary Common Elements. A transfer to a Unit shall convey to the transferee, ownership of the transferor's beneficial interest in and to such property without any reference thereto. Each Unit Owner may use such property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other Unit Owners. The transfer of title to a Unit by foreclosure and sale shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Unit.

**Section 15.6. Association Right to Lease and License Common Elements.** Subject to the provisions of this Declaration, and further subject to the easement rights of the Unit Owners, the Association shall have the exclusive right to lease, license or permit the use of, by less than all Unit Owners or by non-owners, on a short-term basis (defined as month to month tenancy) and with or without charge as the Association may deem desirable, any portion of the Subsidiary Common Elements. The rights granted to the Association in this subparagraph shall only be used in the promotion of the collective best interests of the Unit Owners.

**Section 15.7. Enforcement by Association.** The Association may suspend any Unit Owner's voting rights in the Association or the right of a Unit Owner to use the Association Common Elements for any period or periods during which such Unit Owner fails to comply with the Association's rules and regulations, or with any other obligations of such Unit Owner under this Declaration or the Bylaws. The Association or any aggrieved Unit Owner may also take judicial action against any Unit Owner to enforce compliance with the provisions of the Declaration, Bylaws, Articles of Incorporation, or such rules, regulations or other obligations established by the Association or to obtain damages for noncompliance.

**Section 15.8. Implied Rights.** The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

## **ARTICLE XVI**

### **CONSTRUCTION DEFECTS, DISPUTES, DISPUTE RESOLUTION AND LITIGATION**

**Section 16.1 Testing for Construction Defects.** The Association shall not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing or invasive testing of any kind for defects in construction of any Unit or Common Element or any common elements created under this Declaration or the Master Declaration without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board shall rely on the opinions and/or the conclusions of a qualified expert (e.g. a structural engineer); even in the event such evidence or conditions exist, the Association shall not be obligated to authorize or undertake such testing. Notwithstanding the foregoing, under no circumstances shall the Association authorize such testing as is contemplated under this Section 16.1

(a) unless the nature of the suspected defect is such that:

- (i) it poses a significant risk to life, health, safety or personal property; and
- (ii) it threatens or affects the structural integrity, functionality, or performance of the property (or a portion thereof) for its intended use.

(b) In the event the Board undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant and others responsible for the construction shall be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area and repair any defect that is found to exist. Declarant and others responsible for construction shall also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

(c) In the event that testing discloses any defects, Declarant and others responsible for construction shall be given a reasonable amount of time, based on the nature and extent of the defect, to repair or correct the condition. If Declarant or others responsible for construction fail to repair or correct the condition, the Board shall have the right, but not the obligation, to proceed with a Claim pursuant to this Article XVI of this Declaration. In determining whether to proceed with such a Claim, the Board shall be governed by the same standards as set forth in Section 16.6 below.

**Section 16.2 Consensus for Association Litigation.** Except as provided in this Section 16.1, the Association shall not commence a judicial or administrative proceeding, including without limitation any proceeding required under Section 16.5 below, without: (a) the approval of at least 75% of the Owners; and (b) the affirmative vote of Declarant so long as Declarant owns any Unit. This Section 16.1 shall not apply, however, to: (i) actions brought by the Association to enforce the terms of this Declaration, the Bylaws or the Rules (including, without limitation, the foreclosure

of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or. (iv) counterclaims brought by the Association in proceedings instituted against it. This Section 16.1 shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings, as provided for herein.

Prior to the Association or any Owner commencing any judicial or administrative proceeding which arises out of an alleged defect of any Common Element, Unit or Limited Common Element, Declarant and others responsible for the construction shall have the right to be heard by the Owners and to access, inspect, correct the condition of, or redesign any portion of the Common Elements or the Units, including any improvement as to which a defect is alleged. In addition, the Association or the Owner shall notify the builder who constructed the subject improvement prior to retaining any other expert as an expert witness or for other litigation purposes.

**Section 16.3 Alternative Method for Resolving Disputes.** Declarant, the Association, its officers, directors, and committee members; any Owner, all Persons subject to this Declaration; and any Person. not otherwise subject to this Declaration who agrees to submit to this Section 16.3 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 16.4 of this Declaration (collectively, "Claims"), to the procedures set forth in Section 16.5 of this Declaration.

**Section 16.4 Claims.** Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration, or relating to the design or construction of the Units, the A Common Elements or the Master Association's common elements shall be subject to the provisions of Section 16.5 of this Declaration. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 16.5 of this Declaration:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII of this Declaration (Assessments);
- (b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 14 (Covenants, Conditions and Restrictions);
- (c) any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations, has expired or would expire within 180 days of giving the Notice required by subsection 16.5(a) of this Declaration.



With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 16.5.

**Section 16.5 Mandatory Procedures.**

(a) Notice.

Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent are hereinafter referred to individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the, Colorado area.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within 5 days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the

Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or a "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit D or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This subsection 16.5(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) Allocation of Costs of Resolving Claims.

(i) Each Party, including, without limitation, any Owner and the Association, shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs"). Under no circumstances shall either Party be entitled to recover its Post Mediation Costs, including any attorneys' fees (except as specifically provided under Section 38-33.3-123 of the Act), from the other party. BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS FEES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS SECTION 16.5(d).

(ii) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs. With respect to any Award which is less favorable to Claimant than Claimant's Settlement Demand yet more favorable to Claimant than Respondent's Settlement Offer, each party shall bear its own Post Mediation Costs.

(e) Limitation on Damages.

No party, including, without limitation, any Owner and the Association, shall be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such party's actual damages, and Declarant, the Association and any Owner shall be deemed to have waived their right to receive any damages in a Dispute other than actual damages, including, without limitation, attorneys' fees (except as specifically provided under

Section 38-33.3-123 of the Act), special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER SECTION 16.5(c), THE RIGHT, TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

(f) Multiple Party Disputes.

Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the "Arbitrator" (as defined in Exhibit D attached hereto) may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action in accordance with the rules and procedures adopted by Construction Arbitration Services, Inc. ("CAS").

(g) Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 16.5(b) above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section 16.5. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 38-33.3-123 of the Act.

**Section 16.6 Legal Proceedings.** Subject to the provisions of Sections 16.1 through 16.5 of this Declaration, the Association shall have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration, the Bylaws and the Rules, or the Master Declaration and the bylaws and rules of the Master Association (collectively, the "Master Documents"). The decision to institute legal proceedings by seeking the approval of at least 80% of the Owners pursuant to Section 16.1 of this Declaration, shall be in the sole discretion of the Board and shall be governed by the considerations detailed in Sections 16.1, if applicable. Failure to commence such legal proceedings shall not constitute a waiver of any such rights. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THIS DECLARATION WITH RESPECT TO OWNERS, INCLUDING, WITHOUT

LIMITATION, SECTIONS 7.5(c), 16.5(e) AND 16.5(f), SHALL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO THE ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY THE ASSOCIATION UNDER THIS SECTION 16.6.

**Section 16.7 Enforcement of Declaration, Bylaws, Rules and Master Documents.**

(a) Sanctions and Self-Help.

After notice and an opportunity to be heard as provided in the Bylaws, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines) for violations of this Declaration, the Bylaws, the Rules, the Master Declaration or the Master Documents; (ii) exercise self-help to cure any violations of this Declaration, the Bylaws or the Rules that an Owner of Permittee fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than 15 days delinquent in paying any Assessment or other charge due to the Association. All of the remedies set forth in this Declaration and the Bylaws shall be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of this Declaration, the Bylaws, the Rules or the Master Documents, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs to the extent specifically provided under Section 38-33.3-123 of the Act), reasonably incurred by it in such action.

(b) No Waiver.

In no event shall the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws, the Rules or the Master Documents constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

**ARTICLE XVII**

**MOLD DISCLOSURE & WAIVER**

Mold, mildew, fungi, bacteria and microbiologic organisms (collectively, "Mold") are present in soil, air and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Mold. Due to various reasons, including the varying sensitivities of different individuals to various types of Mold and other contaminants, as of the date of this Declaration, no state or federal standards regarding acceptable levels of exposure to Mold exist. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or

illnesses have been linked with biological pollutants in the indoor environment, including some forms of Mold. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration, it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Mold. Each Owner, by taking title to a Unit, is advised that Declarant, the Association and the Master Association are not qualified and have not undertaken to evaluate all aspects of this very complex issue. Each Owner, by taking title to a Unit, acknowledges that Declarant, the Association and/or the Master Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning, the past, current or future presence or absence of Mold in the Unit, any Limited Common Elements allocated to the Unit, any Common Element Wall(s) located within the Unit, or any other Common Elements or in the vicinity of- the Unit, in the vicinity of any Limited Common Elements allocated to the Unit in the vicinity of any Common Element Wall(s) located within the Unit; in the vicinity of any other Common Elements or within the vicinity of the Property. Declarant, the Association and the Master Association recommend that each Owner, at the Owner's expense, conduct its own investigation and consult with such experts as the Owner deems appropriate regarding the occurrence and effects of Mold, the potential sensitivity or special risk the Owner, his or her family members, and others individuals who will occupy or use the Unit, any Limited Common Elements allocated to the Unit, or any Common Element Wall(s) located within the Unit, may have with respect to Mold, and methods to reduce or limit Mold within the Unit, any Limited Common Elements allocated to the Unit, or any Common Element Wall(s) located within the Unit.

When excessive moisture or water accumulates indoors. Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all Mold in an indoor environment. The key to controlling indoor Mold growth is to control moisture. Each Owner, by taking title to a Unit, agrees to maintain the Unit, any Limited Common Elements allocated to the Unit, and any Common Element Wall(s) located within the Unit in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, keeping dryer and other vents and/or fans clear and functioning, and preventing and repairing plumbing, window and other leaks and sources of moisture. Each Owner, by taking title to a Unit, agrees to make periodic inspections of the Unit, any Limited Common Elements allocated to the Unit, and any Common Element Wall(s) located within the Unit for the presence of Mold or conditions which may increase the ability of Mold to propagate within the Unit, any Limited Common Elements allocated to the Unit, and any Common Element Wall(s) located within the Unit, and to monitor the Unit, any Limited Common Elements allocated to the Unit, and any Common Element Wall(s) located within the Unit on a continual basis for excessive moisture, water or Mold accumulation. If water or moisture is discovered in or around the Unit, any Limited Common Elements allocated to the Unit, or any Common Element Wall(s) located within the Unit, the Owner, by taking title to a Unit, agrees to immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture can result in additional damage and the growth of Mold. Declarant will not be responsible for damages, and each Owner, by taking title to a Unit, hereby waives all rights to damages and subrogation of damages. Each Owner, by taking title to a Unit, agrees to indemnify Declarant, the Association and the Master Association and hold Declarant, the Association and the Master Association harmless from damages, including in all cases personal injury or property

damage, caused by the presence of Mold and/or water or moisture in the Unit or other portions of the Property to the extent that the damages are caused by: (i) the Owner's negligence or failure to properly maintain and monitor the Unit, any Limited Common Element allocated to the Unit, or any Common Element Wall(s) located within the Unit; or (ii) the Owner's failure to promptly take appropriate corrective measures and minimize any damage caused by water or moisture (including, without limitation, failure to promptly notify and engage the help of appropriate professionals or experts).

## **ARTICLE XVIII**

### **GENERAL PROVISIONS**

**Section 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, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant, or by any 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. Additionally, any such violation shall give the Declarant or the Executive Board the right, in addition to any other rights set forth therein, (i) to enter a Unit, the improvement thereupon and any covered parking space appurtenant to such Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein in violation of the Declaration or rules adopted by the Executive Board or Manager without being deemed guilty in any manner of trespass or any other civil or legal violation; and (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach, with each Unit Owner or other person constructing improvements upon the Property hereby waiving the posting of a bond upon entry of such injunction. All reasonable attorney's fees and costs incurred by the Declarant or the Association in a suit to enforce the terms hereof shall, if said Declarant or the Association prevails in such action, be recoverable from the losing party.

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

**Section 18.3. References to Town of Frisco Standards.** Wherever in this Declaration there is a reference to land use regulations, zoning, other Town of Frisco standards, any plats approved by the Town of Frisco or any other federal, state or local rule, law or regulation, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such regulations, zoning, other Town of Frisco standard, Approval Resolutions, plats or any other rule or law.

**Section 18.4. Claims Regarding Declarant.** The Association and all Unit Owners shall have a period of two (2) years from the date a Unit is first conveyed by Declarant within which to assert by legal action or otherwise any claim, demand, cause of action or lawsuit against Declarant with regard to the Property or Project, the Unit thus conveyed, or with regard to the



EXHIBIT A

**SUN GATE  
ALLOCATED INTERESTS IN COMMON ELEMENTS,  
SHARE OF COMMON EXPENSES AND VOTES**

<u>UNIT NUMBER</u>	<u>SQUARE FOOTAGE</u>	<u>Percent Of Each Building</u>	<u>Percent of Total</u>
<u>300 Streamside Lane (Building Site R300)</u>			
1	609.00	21.40%	10.29%
2	814.00	28.60%	13.76%
3	609.00	21.40%	10.29%
4	814.00	28.60%	13.76%
	<u>2,846.00</u>	<u>100.00%</u>	<u>48.11%</u>
<u>304 Streamside Lane (Building Site R304)</u>			
1	707.00	23.03%	11.95%
2	828.00	26.97%	14.00%
3	707.00	23.03%	11.95%
4	828.00	26.97%	14.00%
	<u>3,070.00</u>	<u>100.00%</u>	<u>51.89%</u>
Total 300 and 304	<u>5,916.00</u>		<u>100.00%</u>

