

THE
CONDOMINIUM DECLARATION
OF
AUDREY POINTE CONDOMINIUMS

PREAMBLE

THIS DECLARATION is made on the date hereinafter set forth by Audrey Pointe Holdings, LLC, a Wisconsin limited liability company, hereinafter referred to as “Declarant”.

WHEREAS, Declarant is the owner of certain real property located in Denver, Colorado as more particularly described on Exhibit A and attached hereto and incorporated herein by reference; and

WHEREAS, Declarant intends to create a residential condominium community on said real property together with other improvements thereon; and

WHEREAS, Declarant will convey said real property, subject to the protective covenants, restrictions, reservations, and obligations as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the real property described in Exhibit A attached hereto, together with all easements, rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et seq., as it may be amended from time to time. In the event said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that all of the said real property described on Exhibit A shall be held or sold, and conveyed subject to the following covenants, conditions, and obligations, all of which are declared and agreed to be for the protection of the value of said real property, and for the benefit of any persons having any right, title or interest in said real property, and which shall be deemed to run with the land and shall be a burden and a benefit to any persons acquiring such interest, their grantees, heirs, legal representatives, successors and assigns.

ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 Act means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et seq. as it may be amended from time to time.

1.2 Allocated Interest means the interest in the Common Elements and the Common Expense Liability which are allocated to each of the Units in the Condominium community. The Allocated Interests are as follows:

(a) Interest in the Common Elements. The undivided ownership interest in the Common Elements appurtenant to each Condominium Unit shall be divided according to the number of bedrooms in each unit and not according to the square footage of each unit. Two bedroom units (2, 5, 6, 9, 10, 12, 15, 18, 19, and 22) shall each own 5.2% of the Common Elements and one bedroom units (1, 3, 4, 7, 8, 11, 13, 14, 16, 17, 20, 21) shall each own 4.0% of the Common Elements as more specifically set forth in Exhibit B attached hereto and incorporated herein by reference.

(b) Common Expense Assessment Liability. The Common Expense Assessment shall be divided according to the number of bedrooms in each unit and not according to the square footage of each unit. Two bedroom units (2, 5, 6, 9, 10, 12, 15, 18, 19, and 22) shall each pay 5.2% of the Common Expense Liability and one bedroom units (1, 3, 4, 7, 8, 11, 13, 14, 16, 17, 20, 21) shall each pay 4.0% of the Common Expense Liability and such assessments shall be paid by each Unit within the Condominium Community, except as otherwise stated herein.

1.3 Articles means the Articles of Incorporation of the Association as they may be amended from time to time.

1.4 Assessments means the (a) Common Expense Assessment, (b) Special Assessment, (c) Individual Assessment, and (d) Fines levied pursuant to this Declaration.

1.5 Assessment Lien means the statutory lien on a Unit for any Assessment levied against that Unit together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

The recording of this Declaration constitutes record notice and perfection of the lien. No further recordation or claim of lien for the Assessment is required.

1.6 Association means Audrey Pointe Condominiums Homeowner's Association, a Colorado corporation, not for profit, organized pursuant to C.R.S. §38-33.3-301 of the Act, its successors and assigns, the Articles of Incorporation and Bylaws of which, as herein defined, along with this Declaration, shall govern the administration of the Condominium Community, the Members of which shall be all of the Owners of the Units within the Condominium Community.

1.7 Board of Directors or Board means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association. The term Board of Directors as used herein is synonymous with the term Executive Board as the latter term is used in the Act.

1.8 Building means the buildings comprising the Condominium Community.

1.9 Bylaws means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association, as they may be amended from time to time.

1.10 City means the City of Denver.

1.11 Common Elements means all of the Condominium Community, as hereinafter defined, except the portions thereof which constitute Condominium Units, and also means all parts of the Building or any facilities, improvements, and fixtures which may be within a Condominium Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair, or safety of the Building or any part thereof or any other Condominium Unit therein, and includes those Common Elements which are assigned to the exclusive use of one or more, but not all of the Condominium Unit Owners.

Without limiting the generality of the foregoing, the following shall constitute Common Elements:

(a) all of the land, landscaping, private roads and easements which are a part of the Condominium Community; and

(b) all foundations, columns, girders, beams, and supports of the Building; and

(c) the exterior walls of the Building, the main or bearing walls within the Building, the main or bearing subflooring, and the roof of the Building; and

(d) all stairs, stairways, and walkways not within a Condominium Unit; and

(e) all utility, service, and maintenance rooms, fixtures, apparatus, installations, and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, incineration, or similar utility, service or maintenance purposes, including furnaces, apparatus, installations, facilities, all of which serve more than one Unit and are not located within an Unit, and

(f) in general, all other parts of the Condominium Community necessary in common use or convenient to its existence, maintenance, and safety.

1.12 Common Expense Assessments means those assessments defined in Paragraph 5.2

hereof.

1.13 Common Expense Assessment Liability means the liability for the Common Expenses Assessment allocated to each Unit which is determined in accordance with that Unit's Allocated Interests as set forth in Paragraph 1.2 hereof.

1.14 Common Expenses means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

1.15 Condominium Community means such real property and the improvements located thereon as more fully described on Exhibit A attached hereto.

1.16 Condominium Unit or Unit means the fee simple interest and title to a Condominium Unit together with the undivided interest in the Common Elements appurtenant to such Condominium Unit and all other rights and burdens created by this Declaration.

1.17 Costs of Enforcement means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines or (b) in connection with the enforcement of the terms, conditions, and obligations of the Project Documents.

1.18 Declarant means Audrey Pointe Holdings, LLC, a Wisconsin limited liability company, or its successors as defined in §38-33.3-103(12) of the Act.

1.19 Declaration means the Condominium Declaration of Audrey Pointe Condominiums, also including but not limited to plats and maps.

1.20 Development Rights and Special Declarant Rights means the right to add real estate to the Condominium Community, create units, common elements, or limited common elements within the Condominium Community, subdivide units or convert units into common elements, or withdraw real estate from the Condominium Community, as those rights are defined by C.R.S. § 38-33.3-103(29), and as the Development Rights are reserved by the Declarant under ARTICLE TEN hereof.

1.21 Eligible Mortgagee means a holder, insurer, or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description, requesting that the Association notify them of those matters set forth in ARTICLE ELEVEN hereof.

1.22 First Mortgagee means any Person which owns, holds, insures, or is a governmental guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering a Unit within the Condominium Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.23 First Security Interest means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.24 Reserved.

1.25 Guest means (a) any person who resides with an Owner within the Condominium community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Unit within the Condominium Community, and any member of his or her household, invitee, or cohabitant of any such person; (d) a contract purchaser; or (e) an employee, customer, or client of an Owner or tenant.

1.26 Limited Common Elements means those parts of the Common Elements which are limited to and reserved for the exclusive use of the Owner of a particular Unit as designated on the Map, or a portion of the Common Elements allocated by this Declaration or the Map which are limited to and reserved for the exclusive use of one or more Units but fewer than all of the Units.

1.27 Managing Agent means any one or more persons employed by the Association who is engaged to perform any of the duties or functions of the Association.

1.28 Map means THE CONDOMINIUM MAP OF AUDREY POINTE CONDOMINIUMS, which, in addition to the requirements set forth in § 38-33.3-209 of the Act, the Map shall also depict the following, to wit:

(a) The legal description of the surface of the Condominium Community; and

(b) The linear measurements and location, with reference to the exterior boundaries of the Condominium Community, of the Building and all improvements built within the Condominium Community; and

(c) The floor plans and elevation plans of the Building within the Condominium Community showing the location, the designation, linear dimensions, and identification number of each Condominium Unit, Parking Spaces, and the designation of all of the Common Elements and Limited Common Elements.

Prior to the transfer of ownership of any Unit, the Map, and any supplements thereto, shall contain a certificate by a registered land surveyor certifying that the Map contains all of the

information required by § 38-33.3-209 of the Act.

In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries.

Declarant hereby reserves unto itself the right, from time to time, without the consent of any Owner or First Mortgagee being required to amend the Map to reflect the subdivision or combination of any Unit so long as such amendment is made prior to the expiration of the Declarant's Rights as set forth in Paragraph 10.3 hereof.

Declarant hereby reserves unto the Board of Directors of the Association the right, from time to time, without consent of any Owner or First Mortgagee being required to amend the Map, to (a) insure that the language and all particulars used on the Map and contained in the Declaration are identical, (b) establish, vacate, and relocate utility easements, access easements, and parking spaces, (c) establish certain Common Elements as Limited Common Elements, (d) to reflect the subdivision or combination of any Unit as provided hereunder, and (e) as may be otherwise permitted by the Act.

Declarant further reserves unto the Board of Directors of the Association the right prior to the date upon which Declarant relinquishes control of the Association.

In all other cases the Map may be amended in accordance with Paragraph 12.2 hereof.

The Map and any supplements thereto is hereby incorporated herein by reference as if set forth in its entirety.

1.29 Member means each Owner, as set forth in Paragraph 1.31 hereof.

1.30 Reserved.

1.31 Owner means the owner of record of the fee simple title to any Unit which is subject to this Declaration, whether one or more persons or entities, including the Declarant, so long as any Unit remains unsold, excluding, however, those having an interest merely as security for the performance of any obligation.

1.32 Parking Lot is located on the subject property which is described on Exhibit A.

1.33 Period of Declarant Control means that period of time defined in Paragraph 4.6(b) hereof.

1.34 Person means a natural person, a corporation, a partnership, an association, a trust, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.35 Project Documents means this Declaration and the Map recorded and filed pursuant to the provisions of the Act, the Articles of Incorporation and Bylaws of the Association, and the Rules and Regulations, if any, as they may be amended from time to time. Any exhibit, schedule or certification accompanying a Project Document is part of that Document.

1.36 Property means the property more particularly described on Exhibit A attached hereto and incorporated herein by reference.

1.37 Reserved.

1.38 Rules and Regulations mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Condominium Community, including any amendment(s) to those instruments.

1.39 Security Interest means any interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.40 Special Assessment means those Assessments defined in Paragraph 5.4 hereof.

1.41 Turnover Date means the date the Period of Declarant Control terminates as more fully set forth in Paragraph 4.6(b) hereof.

ARTICLE TWO: NATURE AND INCIDENTS OF THE CONDOMINIUM COMMUNITY

2.1 The Condominium Community. The name of the Condominium Community is Audrey Pointe Condominiums. It is a Condominium Community.

2.2 Initial Number of Units. The number of Units within the Condominium Community is twenty-two (22).

2.3 Division Into Units, Estates of An Owner. The Condominium Community is hereby divided into twenty-two (22) Units, consisting of a separate fee simple estate in a particular Condominium Unit, and an appurtenant undivided fee simple interest in the Common Elements.

The undivided interest in the Common Elements appurtenant to a particular Condominium Unit is determined in accordance with that Unit's Allocated Interest as set forth in Paragraph 1.2 hereof and is as set forth in Exhibit B attached hereto and incorporated herein by reference.

2.4 Title. A Unit may be held and owned by more than one person as joint tenants or as

tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

2.5 Description of a Condominium Unit. Every contract for the sale of a Unit written prior to the filing for record of the Map and this Declaration may legally describe a Unit by its identifying Unit number designation followed by the words “Audrey Pointe Condominiums” with further reference to the Map thereof to be filed for record and the Declaration to be recorded. Upon recordation of the Map and the Declaration in the records of the Clerk and Recorder of Denver County, Colorado, such description shall be conclusively presumed to relate to the therein described Units.

Every deed, lease, mortgage, trust deed, will, or other instrument may legally describe a Unit by its identifying number followed by the words “Audrey Pointe Condominiums”

A sufficient description of a Condominium Unit shall be as follows:

UNIT NO. ____, Audrey Pointe Condominiums, according to THE CONDOMINIUM MAP OF AUDREY POINTE CONDOMINIUMS, recorded on Film ____ as Reception No. ____, and as defined by THE CONDOMINIUM DECLARATION OF AUDREY POINTE CONDOMINIUMS, recorded on Film ____ as Reception No. ____, in the Office of the County Clerk and Recorder, City and County of Denver, Colorado, together with the right to use storage space no. __ and the right to use parking space no. ____.

Every description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Unit, but also the Common Elements and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include: a nonexclusive easement for appropriate ingress and egress throughout the Condominium Community and for the use of appropriate exclusive use of the Limited Common Elements; and all other easements, obligations, limitations, rights, encumbrances, covenants, conditions, and restrictions created in this Declaration.

The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration, without specific references thereto.

The undivided interest in the Common Elements appurtenant to any Unit shall be deemed conveyed or encumbered with that Unit, even through the legal description and the instrument conveying or encumbering said Unit may only refer to the title to that Unit. The reference to the Map and Declaration in any instrument shall be deemed to include any Supplements or Amendments to the Map or Declaration without specific reference thereto.

2.6 Unit Boundaries. The Interior unfinished surfaces of the perimeter walls, lowermost floors, and uppermost ceilings shall mark the perimeter boundaries of a Unit as shown on the Map, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof

are a part of the Units, and all other portions of the perimeter walls, floors, or ceilings are part of the Common Elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any fixtures lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

Any exterior shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, roof gardens, decks, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Subject to the above, all spaces, interior partitions, and other fixtures and improvements located within the boundaries of a Unit are part of the Unit.

2.7 Physical Boundaries. The existing physical boundaries of any Unit or Common Elements shall be conclusively presumed to be the boundaries.

2.8 Inseparability of a Unit. An Owner's undivided interest in the Common Elements shall not be separated from the Unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Unit even though the interest is not expressly mentioned or described in a deed or other instrument.

2.9 No Partition. The Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for the physical partition or subdivision of a Unit between or among the Owners thereof, provided, however, an action of partition of a Unit shall be permitted by a sale and the division of the sale proceeds.

2.10 Separate Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of the taxes authorized by law, including ad valorem levies and special assessments. Neither the Buildings, the Condominium Community, nor any of the Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

2.11 Limited Common Elements. A portion of the Common Elements reserved for the exclusive use of the individual Unit Owners of the respective Units, and such items and areas are referred to as "Limited Common Elements." The Limited Common Elements so reserved shall be identified on the Map. The allocation of Limited Common Elements, as described more fully on the Map, may not be altered without the consent of the Unit Owners whose Unit is affected.

Such Limited Common Elements are hereby made appurtenant to and shall not be partitioned from the Unit to which they are required to be made in the deed, mortgage, instrument of conveyance, or other instrument describing the Unit.

2.12 Compliance with Provisions of Declarations, Articles and Bylaws of the Association. Each Owner shall comply strictly with, and shall cause each of his or her Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws of the Association, and the decisions, rules, regulations, and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time.

Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, along with costs of suit and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by any aggrieved Owner.

2.13 Liens Against Condominium Units - Removal from Lien - Effect of Part Payment. Liens or encumbrances shall only arise or be created against each Condominium Unit and the percentage of undivided interest in the Common Elements appurtenant to the Condominium Unit, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel or real property subject to individual ownership.

No labor performed or materials furnished, with the consent or at the request of an Owner or his or her agent, shall be the basis for the filing of a lien pursuant to law against the Unit or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Unit to the Board of Directors in the case of emergency repairs.

Labor performed or materials furnished for the Common Elements, if duly authorized by the Board of Directors in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner, and shall be the basis for the filing of a lien pursuant to law against each of the Units within the Condominium Community.

In the event a lien is effected against two or more Units, the Owners of each of the separate Units may remove their Condominium Unit and the percentage of undivided interests in the Common Elements appurtenant to said Condominium Unit from the lien by payment of the fractional or proportional amount attributable to each of the Units affected.

Individual payment shall be computed by reference to the percentages appearing in this Declaration. Subsequent to payment, discharge or other satisfaction, the Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his or her rights against any Unit not so released or discharged.

Each Owner shall indemnify and hold each of the other Owners harmless from and

against liability or loss arising from the claim of any lien against the Unit of the Owner, or any part thereof, for labor performed or for materials furnished in the course of work performed on such Owner's Unit.

At the written request of any Owner, the Board shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorneys' fees by an Individual Assessment against such Owner in accordance with Paragraph 5.5 hereof.

2.14 Parking Spaces and Storage Spaces. All Parking Spaces and Storage Spaces shall be a part of the Limited Common Elements. Each Parking Space and Storage Space may be limited to and reserved for the exclusive use of the Owners of a particular Condominium Unit. All Parking Spaces and Storage Spaces shall be assignable by the Declarant. The Association may designate Visitor Parking. Owners may not use Visitor Parking for their own vehicles without the prior written consent of the Association.

Any contract, deed, lease, assignment, mortgage, deed of trust or other instrument used to convey, lease, assign, encumber or otherwise affect the right to use an appurtenant Parking Space or Storage Space by adding to the appropriate description, as set forth in Paragraph 2.5 hereof, the additional language "together with the right to use Parking Space No. ___ and Storage No. ___."

2.15 Restrictions on Sale of a Condominium Unit. The right of an Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

2.16 Restrictions on Mortgaging Units. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Unit. There is no requirement for the use of a specific lending institution or particular type lender.

ARTICLE THREE: VARIOUS RIGHTS AND EASEMENTS

3.1 Owner's Rights in the Common Elements. Every Owner and such Owner's Guests shall have an easement in the Common Elements for the purpose of access to their Units and to use the Common Elements and all other real estate that must become Common Elements for all other purposes. Such easements shall pass with the title of the Unit, subject to the Development Rights and Special Declarant Rights of the Declarant reserved herein and the following rights of the Board of Directors:

(a) To borrow money to improve the Common Elements and to mortgage said Common Elements as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a security interest unless such is approved by Owners to which at least sixty-seven percent (67%) of the votes in the Association are

allocated, including sixty-seven percent of the votes allocated to Units not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners entitled to cast at least sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Article as more fully set forth in § 38-33.3-312 of the Act.

(c) To promulgate and adopt Rules and Regulations with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of a Member for any period during which any Assessment remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Declaration, Bylaws, or Rules and Regulations.

(e) To take such steps as are reasonably necessary to protect the Common Elements against foreclosure.

(f) To enter into, make, perform, or enforce any contracts, leases, agreements, licenses, easements, and rights-of-way, for the use of Common Elements or other property by Owners and Guests for any purpose the Board may deem to be useful, beneficial, or otherwise appropriate.

(g) To close or limit the use of the Common Elements temporarily while maintaining, repairing, and making replacements in the Common Elements, or permanently if approved by Members to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act.

(h) To make such use of the Common Elements as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) To regulate the use, maintenance, repair, replacement, and modification of the Common Elements.

(j) To exercise the rights granted to the Board of Directors in Paragraph 4.12 hereof.

3.2 Owner's Rights in Limited Common Elements. Each Owner and his or her Guests shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on

the Map as appurtenant to the Unit owned by such Owner.

3.3. Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Elements and facilities to their Guests.

3.4 Owner's Easement for Access, Support, and Utilities. Each Owner shall have a nonexclusive easement for access between his or her Condominium Unit and the roads and streets adjacent to the Condominium Community. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owner's Unit. Each Owner shall have a non-exclusive easement in and over the Common Elements within the Condominium Community including the Common Elements within the Condominium Unit of another Owner, for horizontal and lateral support of the Condominium Unit which is part of his or her Unit, and for utility service to the Condominium Unit, including water, sewer, gas, electricity, telephone and television service.

3.5 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Condominium Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Condominium Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Condominium Unit, the Owner of that Condominium Unit shall and does have an easement for such encroachment and for the maintenance of same. The easement shall extend for whatever period the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Condominium Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Condominium Community or any part thereof or by any other movement of any portion of the improvements located upon the Condominium Community.

3.6 Easements in Condominium Units for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within a Condominium Unit. All Owners shall permit a right of entry to the Board of Directors or any other person authorized by the Board of Directors, whether the Owner is present or not, for access through each Condominium Unit to all Common Elements, from time to time, as may be necessary for the routine maintenance, repair, or replacement for any of the Common Elements located thereon or accessibly therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Condominium Unit.

For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of a least one (1) day's notice in writing to the Owner. In case of emergency, entry shall be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

The Board of Directors or its agents is granted the authority to use such reasonable force as is necessary to gain entry into the Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. The Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements because of such forcible entry.

All damage to the interior or any part of a Condominium Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Elements, at the instance of the Association, shall be paid for as part of the Common Expense Assessment by all of the Owners. No diminution or abatement for Common Expense Assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance, or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to damage.

Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of such repairing such damage. In the event the Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board of Directors may pay for said damages and charge the Owner responsible as an Individual Assessment in accordance with Paragraph 5.5 hereof.

3.7 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Condominium Community, to enter upon all driveways, Common Elements, and Limited Common Elements located in the Condominium Community, in the performance of their duties.

3.8 Utility Easements. The Board of Directors has the right to grant permits, licenses, and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium Community.

3.9 Easements Deemed Appurtenant. The easements, uses, and rights herein created for an Owner shall be perpetual and appurtenant to the Units owned by such Owner. All conveyances or any other instruments affecting title to a Unit shall be deemed to grant and reserve the easements, uses, and rights as provided for herein, as though set forth in said documents in full, even though no specific reference to such easements, uses, or rights appear in such conveyance.

ARTICLE FOUR: THE ASSOCIATION

4.1 Name. The Name of the Association is Audrey Pointe Condominiums Homeowner's Association.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall manage,

operate, care for, insure, maintain, repair, and reconstruct all of the Common Elements and keep the same in a safe, attractive, and desirable condition for the use and enjoyment of all of the Owners and the residents of the Condominium Community. Any purchaser of a Unit shall be deemed to have assented to, ratified, and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes.

The Board of Directors shall have all of the powers, authority, and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association.

4.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of Directors of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.5 Classes of Membership and Voting. The vote of the Membership shall be required for the determination of general matters. Each Unit shall get one vote.

The vote for a Unit, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest of the Unit is made prior to the completion of the vote, in which case the vote for such Unit shall be exercised, as the persons holding such interest shall determine between themselves. Should the joint owners of a Unit be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

In the absence of express notice to the Board of Directors of the designation of a specific person to cast a vote, the vote of a corporation may be cast by any officer of that corporation, the vote of a partnership may be cast by any general partner of that partnership, the vote of a limited liability company may be cast by any manager of that limited liability company, and the vote of a trust may be cast by any trustee of that trust.

4.6 Board of Directors.

(a) Number and Classification. The Board of Directors shall consist of three (3) persons. Except as otherwise provided herein, the Directors shall be elected solely by the Owners.

(b) Declarant Control of the Association. Subject to Paragraph 4.6 (c) below, there

shall be a “Period of Declarant Control” during which Declarant may appoint and remove the officers and members of the Board. The Period of Declarant Control terminates no later than the earlier of:

(i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than the Declarant; or

(ii) two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business to Owners other than Declarant; or

(iii) two (2) years after any right to add new Units was last exercised; or

(iv) such other time as the Declarant may, in its discretion, determine.

(c) Election by Owners.

(i) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one (1) member of the Board of Directors must be elected by Owners other than the Declarant.

(ii) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, at least two (2) members of the Board of Directors must be elected by Owners other than the Declarant.

(iii) Not later than the termination of the Period of Declarant Control, all members of the Board of Directors shall be elected by the Unit Owners; provided, however, that in all events a majority of the members of the Board of Directors must be Unit Owners other than Declarant or a representative of Declarant.

The Board of Directors shall elect the officers of the Association. The Owners elected to the Board of Directors shall take office upon election.

The Board of Directors and the officers of the Association shall have the duty to represent the interests of the Unit Owners in a fair and just manner on all matters that may affect all Unit Owners.

4.7 Dispute Resolution. Any claim, controversy, or dispute regarding interpretation, application, and enforcement of this Declaration shall be resolved by binding arbitration in accordance with the Colorado Arbitration Act by a single judge panel of the Judicial Arbitrator Group, Inc. or such similar organization. The parties to such dispute shall agree upon a single arbitrator who shall be an experienced operator or manager of similar condominium projects. The arbitrator shall have authority, in the sound exercise of discretion, to award the party whose position is substantially favored, such party’s costs and expenses, including reasonable attorney’s fees.

4.8 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver without expense to the Board all property of the Owners and of the Association held by or controlled by the Declarant, including without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, as amended, the Association's Articles of Incorporation, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with § 38-33.3-303(9)(b) of the Act.

(c) The Association funds or control thereof;

(d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common Elements, a copy of any plans and specifications used in the construction of improvements in the Condominium Community, and inventories of these items;

(e) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;

(f) Any other permits issued by governmental bodies applicable to the Condominium Community and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association;

(g) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective, if any;

(h) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(i) Employment contracts in which the Association is a contracting party, if any; and

(j) Any service contract in which the Association is a contracting party or in which the Association of the Owners have any obligations to pay a fee to the persons performing the services.

4.9 Budget.

(a) The Board of Directors shall cause to be prepared, at least sixty (60) days prior to the commencement of each calendar year, a budget for such calendar year. Within thirty (30)

days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider approval of the budget not less than fourteen (14) days nor more than sixty (60) days after delivery of the summary.

Unless at that meeting Owners to which at least eighty percent (80%) of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) If the Board of Directors deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Paragraph 4.9 (a), above, the Board may adopt a proposed amendment to the budget, deliver a summary of the proposed amendment to all Owners, and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days, nor more than sixty (60) days, after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least eighty percent (80%) of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present.

4.10 Association Agreements. Except for any agreement concerning the professional management of the Condominium Community, any contract providing for services of the Declarant, or the agreement with Automatic Laundry, any agreement may not exceed one (1) year, and any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days written notice.

The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts, but excluding the lease with Automatic Laundry) entered into during the Period of Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such transfer from Declarant Control upon not more than ninety (90) days notice to the other party thereto.

4.11 Indemnification. Each Officer, Director, and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of him or her being or having been an Officer, Director, or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director, or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

4.12 Certain Rights and Obligations of the Association.

(a) Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an Attorney-in-Fact to deal with the Condominium Community upon its damage, destruction, condemnation, and obsolescence.

The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control, and deal with the interests of such Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Condominium Community upon its destruction, condemnation, or obsolescence hereinafter provided.

The acceptance by any person of any interest in any Unit shall constitute an appointment of the Board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer, and regulate the Condominium Community and to perform all of the duties required of it.

(b) Contracts, Easements, and Other Agreements. The Board of Directors shall have the right to enter into, grant, perform, enforce, cancel, and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guest, and other persons, concerning the Common Elements.

Any of such contracts, licenses, leases, agreements, easements, and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(c) Other Association Functions. The Association may undertake any activity, function, or service for the benefit of or to further the interests of all, some, or any Members on a self-supporting, Special Assessment, or Common Expenses Assessment basis.

(d) Implied Rights. The Board of Directors 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.

4.13 Certain Rights and Obligations of the Declarant. So long as there are unsold Units within the Condominium Community owned by the Declarant, the Declarant shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Unit.

ARTICLE FIVE: ASSESSMENTS

5.1 Obligation. Each Owner, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special

Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement, which shall be a continuing lien upon the Unit against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without a notice or demand and without set off or deduction. Each Owner shall be responsible to pay a percentage of the total Common Expense Assessments representing a share for each Unit within the Association in accordance with the Common Expense Assessment Liability set forth in Paragraph 1.2(b) hereof. All Owners of each Unit shall be jointly and personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Unit.

The personal obligation for delinquent assessment shall not pass to such Owner's successors in title unless expressly assumed by them.

5.2 Purpose of the Assessments. The Common Expenses Assessment shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Condominium Community and the Members of the Association. Such purposes shall include but not be limited to the improvement, repair, maintenance, reconstruction, and insuring of the Common Elements, and any other purpose reasonable, necessary, or incidental to such purposes. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping and snow removal of the Common Elements, care of grounds within the General Common Elements, routine repairs and renovations within the Common Elements, wages, water and utility charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of the Declaration, payment of any default remaining from a previous assessment period.

Such Assessment shall include the establishment and maintenance of a reserve fund for the improvement, maintenance, reconstruction, and repair of the Common Elements on a periodic basis, provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

Any surplus funds derived from Assessments shall be transferred to the reserve fund or used for Association operations, in the Board of Director's sole discretion and by acceptance of a deed to his or her Unit, each Owner hereby directs the Board of Directors to make this determination each year.

5.3 Date of Commencement of the Common Expense Assessment. The Common Expense Assessment shall commence as to all Units on the first day of the month following the effective date of the first budget of the Association.

Until the commencement of the collection of the Common Expense Assessments, the

Declarant shall pay all of the expenses incurred and paid for by the Association, not to include any allocation to the reserve fund.

5.4 Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, improvement, repair, or replacement of a capital improvement upon the Common Elements, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association provided that any such assessment shall have the approval of Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Unit in accordance with that Unit's Common Expense Liability in accordance with Paragraph 1.2 hereof. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Owners not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies to whom at least sixty percent (60%) of the votes in the Association are allocated shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Any common expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit(s) to which that Limited Common Element is assigned equally.

5.5 Individual Assessments. The Board of Directors shall have the right to individually levy any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 2.13, 6.11, 7.2, 7.6, and 9.2 thereof. No individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association. Individual Assessments shall be collected as part of the Cost of Enforcement.

5.6 Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules and Regulations of the Association. No such Fine shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the bylaws of the Association.

Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement.

5.7 Levy of Assessments. Common Expense Assessments shall be levied on all Units based upon a budget of the Association's cash requirements to accomplish the purposes set forth in Paragraph 5.2 hereof. The Common Expense Liability shall be prorated among the Units in accordance with that Unit's Common Expense Liability as set forth in Paragraph 1.2 hereof.

The omission or failure of the Board of Directors to levy the Common Expense Assessment for any period shall not be deemed a waiver, modification, or a release of the Owners from their obligation to pay.

Special Assessments shall be levied in accordance with Paragraph 5.4 hereof.

Fines and Individual Assessments may be levied at any time as required. Both assessments are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

No Owner may waive or otherwise escape liability for the Common Expenses Assessment provided for herein by the non-use of the Common Elements or the abandonment of his or her Unit.

5.8 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

Common Expense Assessments shall be levied on an annual basis and shall be due and payable in monthly installments, provided that the first Assessment levied shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Unit between annual due dates shall pay a prorated share.

Special Assessments shall be due and payable as established by the Board of Directors but may be payable on an installment basis as determined by the Board.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

5.9 Remedies for Nonpayment of Assessment. If any Assessment (to include Costs of Enforcement) is not fully paid within fifteen (15) days after the same becomes due and payable, then:

(a) Interest shall accrue at the default rate set by the Board of Directors, not to exceed twenty-one percent (21%) per annum, on any amount of the Assessment in default accruing from the due date until date of payment.

(b) The Board may accelerate and declare immediately due and payable all unpaid installments of the Assessment otherwise due during the fiscal year during which such default occurred;

(c) The Board may bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and

(d) The Board may proceed to foreclose its lien against the Unit pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments.

5.10 Assessment Lien. The Association is hereby granted an Assessment Lien against each Unit for any Assessment levied by the Board of Directors and for Costs of Enforcement when the Unit Owner fails to pay as required by the Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

(a) Liens and encumbrances recorded before the recordation of the Declaration and, in a cooperative, liens and encumbrances which the Association creates, assumes, or takes subject to;

(b) A security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the Unit.

The Act does not affect the priority of mechanic's or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare, and record in the county in which the Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Unit shall not affect the lien for said Assessments except that sale or transfer of any Unit pursuant to foreclosure of any first mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against that Unit which have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

In any action by an Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Unit under any assignment of rents given in connection with a first deed of trust.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Unit; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Unit under any assignment of rents given in connection with a first deed of trust. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor or rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Unit for Assessment and Costs of Enforcement shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

5.11 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for its expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be credited to the Owners in proportion to their Allocated Interests or credited to them to reduce their future Assessments.

5.12 Working Capital Fund. At the closing of the initial sale of a Unit to an Owner other than the Declarant, a non-refundable contribution shall be made by Purchaser to the Working Capital Fund of the Association in the amount equal to at least two (2) months' installment of the

Common Expense Assessment for such Unit. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall, until used, be maintained with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase any additional equipment, property, or services. All sums paid toward the Working Capital Fund pursuant to this section shall be nonrefundable.

Such contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the transfer of his or her Unit, an Owner shall be deemed to have waived any interest in the Working Capital Fund.

5.13 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's Registered Agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit.

The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or First Mortgagee delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Unit for unpaid Assessments which were due as of the date of the request.

5.14 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. The Declarant is exempt from the requirements of this Paragraph 5.14.

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

ARTICLE SIX: RESTRICTIVE COVENANTS AND OBLIGATIONS

6.1 Use and Occupancy. Each Owner of a Unit shall be entitled to the exclusive ownership and possession of his or her Unit. Subject to the Development and Special Declarant Rights reserved by the Declarant in ARTICLE TEN hereof, no Residential Unit within the

Condominium Community shall be used for any purpose other than single-family residential purposes as generally defined or for a home occupation so long as such occupation is (i) allowed by the local zoning laws, (ii) employs no outside employees, and (iii) requires no signage or parking, provided, however, that uses described as “day care” or “child care” facilities (licensed or unlicensed) are expressly prohibited unless approved by the Board of Directors.

6.2 Use of the Common Elements. Each Owner and his or her Guests may use the appurtenant Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board of Directors may adopt Rules and Regulations governing the use of the Common Elements, but such Rules and Regulations shall be uniform and nondiscriminatory. Each Owner, by the acceptance of his or her deed or other instrument of conveyance or assignment and such Owner’s Guests occupying the Unit agree to be bound by any such adopted Rules and Regulations.

There shall be no obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements without the prior written consent of the Board of Directors. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board of Directors of the Association.

6.3 No Unlawful Use. No unlawful, immoral, offensive, or improper use shall be permitted or made within the Condominium Community or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction shall be observed.

6.4 Signs. No signs shall be placed or permitted within the Condominium Community, except those identifying the Condominium Community, the selection and location of which is reserved to the Declarant until all of the Units have been sold, at which time such authority shall vest in the Board of Directors of the Association.

"For Sale" and "For Lease" signs are allowed with written approval of the Board of Directors except that the Board of Directors may approve only two "For Sale" signs for use at any one time.

6.5 Antennas and Exterior Equipment. Except as otherwise provided by law, no exterior equipment or fixtures including, but not limited to, the following shall be permitted without the written consent of the Board of Directors: radio, television, or other types of antennas and satellite dishes; air conditioning units, swamp coolers, or other ventilating equipment and, any type or kind of wiring, ducts, or pipes.

6.6 Pets and Animals within the Condominium Community. No animals, livestock, poultry, reptiles, or insects of any kind, shall be raised, bred, kept, or boarded in or on any portion of the Condominium Community; except that dogs, cats, or other household animals may be allowed in a Residential Unit occupied by Owners so long as they are not raised, bred, or maintained for any commercial purpose, and are kept in such number or in such manner so as not to create a nuisance or inconvenience to any residents of the Condominium Community as determined by

the Board of Directors in their sole and subjective discretion.

6.7 Property to be Maintained. Each Unit, at all times, shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Units or the street, except as necessary during the period of construction. No unsightliness or waste shall be permitted on or in any part of the Condominium Community. (Without limiting the generality of the foregoing, no Owner shall keep or store anything on or in any of the Common Elements nor shall any Owner hang, erect, affix, or place anything on or in windows or doors of Units, which would or might create an unsightly appearance).

6.8 No Noxious, Offensive, Hazardous, or Annoying Activities. No noxious or offensive activity shall be carried out upon any part of the Condominium Community, nor shall anything be done or placed on or in any part of the Condominium Community which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No Owner shall permit any fire hazard to exist in the Condominium Community or permit any use of his or her Unit or the Common Elements which might increase the rate or cost for insurance for the Condominium Community.

No sounds shall be emitted on any patio of the Condominium Community which are unreasonably loud or annoying. No odor shall be emitted on any part of the Condominium Community which is noxious or offensive to others. No light shall be emitted from any part of the Condominium Community which is unreasonably bright or causes unreasonable glare. In no event shall the items set forth herein be deemed to be a complete list of noxious activities prohibited hereunder and the Board of Directors shall have the right to terminate any other noxious or otherwise offensive activity carried on by an Owner in violation of the provisions hereof.

6.9 Rules and Regulations. Rules and regulations may be adopted by the Board of Directors concerning and governing the use of the Common Elements provided, however, that such Rules and Regulations shall be uniform and nondiscriminatory. Copies of all such Rules and Regulations shall be furnished to Owners prior to the time that they become effective.

No Owner or any guest, licensee, or invitees of an Owner shall violate the Rules and Regulations adopted from time to time by the Board of Directors, whether relating to the use of Units, the use of Common Elements, or otherwise. The Board may impose a fine in an amount as may be determined from time to time on any Owner for each violation of such Rules and Regulations of such Owner or his or her Guests.

6.10 Exterior Modifications. No Owner shall modify, alter, repair, decorate, redecorate, or improve the exterior of any Condominium Unit or any of the Common Elements without the express written approval of the Board of Directors in accordance with Paragraph 9.5 hereof.

6.11 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's

Guests, loss or damage shall be caused to any person or property within the Condominium Community, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees and costs, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.5 hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 6.11 shall be made by the Board of Directors and shall be final.

6.12 Lease of a Condominium Unit. With the exception of a First Mortgagee who has acquired title to a Unit by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Condominium Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) The Board of Directors shall be furnished with a copy of the lease or rental agreement prior to the effective date of said lease. The Association shall have and may exercise the right to control Owner's use and occupancy of their respective units in order to assure Unit Owners of eligibility of the project for any federal government lending agency. In this regard, the Association shall adopt rules and regulations with respect to leasing of Units to non-Owners. Not less than seventy percent (70%) of the Units (or such lower percentage as may be allowed by all federal lending agencies) must be Owner-occupied (as a primary residence or second home) at all times. Any Owner wishing to lease a Unit shall be subject to this percentage occupancy requirement and must first apply for authorization from the Association for any non-Owner residential use. Allowance of a Unit Owner to lease a Unit shall be on a first-come, first-serve basis and the Association shall have the authority to permit or deny the use or leasing of any Unit within the community, subject to then-current federal mortgage eligibility requirements.

(b) Any lease or rental agreement is subject to the terms of this Declaration and the Bylaws, Articles of Incorporation and the Rules and Regulations of the Association;

(c) The failure of the lessee or renter to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation, or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them; and

6.13 Waiver of Summary Abatement. The Declarant and the Association waives the right to use summary abatement or similar means to enforce the restrictions herein contained. Judicial proceedings must be instituted before any items of construction can be altered or demolished.

The Association, acting through its Board of Directors, shall have the standing and power to enforce all of the above Restrictive Covenants and Obligations.

ARTICLE SEVEN: INSURANCE/CONDEMNATION

7.1 Authority to Purchase/General Requirements. Except as provided below, all insurance policies relating to the Condominium Community shall be purchased by the Board of Directors. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

EACH OWNER MUST OBTAIN INSURANCE COVERAGE FOR ALL OF SUCH OWNER'S PERSONAL PROPERTY, HOUSEHOLD GOODS, AND FURNITURE LOCATED WITHIN SUCH OWNER'S CONDOMINIUM UNIT, TOGETHER WITH PERSONAL LIABILITY COVERAGE (INCLUDING COVERAGE FOR OWNER'S NEGLIGENCE) TO COVER ACTS OR OCCURRENCES WITHIN SUCH OWNER'S CONDOMINIUM UNIT. THE ASSOCIATION WILL NOT PROVIDE SUCH COVERAGES IN ITS MASTER POLICIES.

THE OWNER OF AN OWNER-OCCUPIED CONDOMINIUM UNIT SHOULD PURCHASE A CONDOMINIUM UNIT OWNER'S POLICY (HO-6) OR ITS EQUIVALENT. THE OWNER OF A NON-OWNER-OCCUPIED CONDOMINIUM UNIT SHOULD PURCHASE A CONDOMINIUM OWNERS RENTAL LIABILITY POLICY OR ITS EQUIVALENT.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, Owner, or First Mortgagee, or (b) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders, or members; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

(a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent, or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households.

(b) Such policy shall not be canceled, invalidated, or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer, or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors cure the defect and such defect is not cured within forty-five days after such demand;

(c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 7.4 hereof may not be canceled, substantially modified, or not renewed (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to

the Board of Directors and each Owner and First Mortgagee to whom a certificate of insurance has been issued, at their last known address;

(d) Such policy must provide that no assessment may be made against a First Mortgagee and that any assessment made against others shall not become a lien on a Unit superior to the lien of a First Mortgagee except as provided for in the Act; and

(e) The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as an Owner, if such coverage is available; and

(f) Such policy shall provide that each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association; and

(g) Such policy shall provide that no act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(h) If, at any time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better.

All insurance policies shall contain the standard mortgage clause or equivalent endorsement (without contribution) in which it appropriately names the First Mortgagee in the policy as its beneficiary.

7.2 Condominium Insurance. The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of condominium insurance with sprinkler leakage (if applicable) and debris removal, insuring all the Common Elements and Limited Common Elements located within the Condominium Community.

Such insurance shall also include, among other things, all fixtures, installations, or additions comprising a part of the individual Condominium Units within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the Condominium Unit initially installed or replacements thereof made in accordance with the original plans and specifications, including those replacements installed by or at the expense of the Owner. All references herein to a "BLANKET" type policy of property insurance, are intended to denote "SINGLE ENTITY" insurance coverage.

Such insurance shall also include as a minimum protection against (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; (2) in the

event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent); (3) all other perils which are customarily covered with respect to condominiums similar in construction, location and use.

Such insurance shall at all times represent one hundred percent of the current replacement cost based on the most recent appraisal of the Common Elements, Limited Common Elements, and the attached fixtures, installations, and additions comprising a part of the Condominium Units. The current replacement cost shall not include values for land, foundation, excavation, and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for co-insurance. If available, the Master Policy shall be endorsed with a "Guaranteed Replacement Cost Endorsement."

The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall be consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent (100%) of the current replacement cost as defined above.

Such policies shall also provide that any "no other insurance" clause expressly excludes individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provided for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

A certificate, together with proof of payment of premiums, shall be delivered by the insured to any Owner or First Mortgagee requesting the same, at least thirty (30) days prior to expiration of the then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the individual Owners and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The Association shall hold any insurance proceeds received in trust for the Owners and for holders of Security Interests as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Condominium Community. Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Condominium Community has been repaired or fully restored.

Title to each Unit within the Condominium Community is declared and expressly made subject to the terms and conditions hereto, and acceptance by the grantee of a deed or other instrument or conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners constitute and appoint the Association their true and lawful attorney in their name, place, and stead for the purpose of dealing with the Condominium Community upon its damage or destruction as is hereinafter provided.

As attorney-in-fact, the Board of Directors of the Association shall have full and complete authorization, power, and right to make, execute, and deliver any contract or any other instrument with respect to the interest of any Owner which is necessary and appropriate to exercise the powers herein granted.

The deductible, if any, on such insurance policy shall be as the Board of Directors determines to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, ten thousand dollars (\$10,000.00) or one percent (1%) of the face amount of the policy, whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated. The Board of Directors shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Paragraph 5.5 hereof.

7.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability insurance including eviction, libel, slander, false arrest and invasion of privacy, and property damage insurance covering all of the Common Elements and Limited Common Elements.

Such coverage under this policy shall include, without limitation, the legal liability of the insured for property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Elements and Limited Common Elements and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to the Condominium Community similar in construction, location, and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Workman's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance, and Severability of Interest Endorsement.

IN THE EVENT THE ASSOCIATION HOSTS A FUNCTION AND CHARGES FOR FOOD OR DRINK AND LIQUOR IS SERVED, THERE WILL BE NO HOST LIQUOR LIABILITY COVERAGE FOR THE ASSOCIATION. IF MONEY IS CHARGED, A LIQUOR LIABILITY POLICY SHALL BE REQUIRED TO GIVE COVERAGE TO THE

ASSOCIATION.

The general liability insurance shall also include the Declarant as an additional insured in such Declarant's capacity as Unit Owner or Board of Directors member.

Unit Owners shall also be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

7.4 Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee, or Managing Agent who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who were without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its managing agent at any time while the policy is in force.

The policy must include a provision that calls for ten (10) days written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each service that services a Fannie Mae owned or secured mortgage in the Condominium Community.

A management agent that handles funds for the Association should be covered by its own fidelity insurance policy which must provide the same coverage required of the Association.

7.5 Additional Insurance.

(a) If the area where the Condominium Community is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Condominium Community shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent (100%) of the Condominium Community's current replacement cost or the maximum amount available.

The Association must also maintain coverage for all Common Elements and Limited

Common Elements for one hundred percent of their replacement cost as defined above. A separate Association endorsement is required if not already a part of the policy.

Deductibles may not exceed the lower of five thousand dollars (\$5,000.00) or one percent (1%) of the face amount of the coverage. Funds for such deductibles must be included in the Association's Reserve and be so designated.

If the Condominium Community at the time of the recording of this Declaration is not identified as a Special Flood Hazard Area but becomes reclassified at a later date as such, the Board of Directors shall obtain flood insurance for the Condominium Community in accordance with the above. Conversely, flood insurance may be discontinued if the Condominium community is removed from the Flood Plain.

(b) Adequate Directors and Officers Liability Insurance, if available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

(c) Workman's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law;

(d) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Condominium Community; and

(e) If it is determined by a First Mortgagee that the existing coverages do not adequately protect the Condominium Community, the Board of Directors shall obtain such additional coverages.

7.6 Premiums. Insurance premiums for insurance carried by the Association shall be paid for by the Association as a Common Expense.

In the event there are not sufficient funds generated from the Common Expense Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.5 hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among Owners in the same proportion as the Common Expense Assessment.

7.7 Separate Insurance. No owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this

Paragraph.

7.8 Damage to Property. Any portion of the Condominium Community for which insurance is required under § 38-33.3-313 of the Act or for which insurance carried by the Association is in effect that is damaged or destroyed, shall be repaired or reconstructed by the Association in accordance with ARTICLE EIGHT hereof.

7.9 Condemnation. If all or part of the Condominium Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

ARTICLE EIGHT: RESTORATION UPON DAMAGE OR DESTRUCTION

8.1 Duty to Restore. Any portion of the Condominium Community for which insurance is required under the Act or for which insurance carried by the Association is in effect that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(a) The Condominium Community is terminated;

(b) Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety;

(c) Owners owning at least sixty-seven percent (67%) of the undivided interests in the Common Elements and the consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of all of the Eligible Mortgagees within the Condominium Community (based on one (1) vote for each first mortgage owned), including every Owner of a Unit or appurtenant Limited Common Element that will not be rebuilt, vote not to rebuild.

In the event the Condominium Community is not repaired or reconstructed in accordance with the above, the Condominium Community shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

8.2 Plans/Costs. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors and Owners (other than the Declarant) owning at least sixty-seven percent (67%) of the undivided interests in the Common Elements. The cost of repair or reconstruction in excess of insurance proceeds and reserves is a Common Expense.

8.3 Reconstruction of Less than the Entire Condominium Community. If the entire Condominium Community is not repaired or reconstructed, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium Community, and:

(a) The insurance proceeds attributable to a Unit and Limited Common Elements that are not reconstructed must be distributed to the Owner of the Unit and the Owners of the Unit to which the Limited Common Elements were appurtenant to, and to holders of Security Interests, as their interest may appear;

(b) The remainder of the proceeds must be distributed to each Owner and holders of Security Interests, as their interests may appear, in proportion to such Owner's interest in the Common Elements as set forth in Paragraph 1.2 hereof; and

(c) If the Owners vote not to rebuild a Unit, all of the Allocated Interests of that Unit shall be reallocated as if the Unit has been condemned, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations.

ARTICLE NINE: MAINTENANCE, REPAIR AND RECONSTRUCTION

9.1 By the Association. The Association shall be responsible for the maintenance, repair, and reconstruction of all of the Common Elements to include the Limited Common Elements, whether located inside or outside of the Units in accordance with this ARTICLE NINE.

9.2 By the Owner.

(a) Each Owner shall keep his or her Unit and its equipment, appliances, and appurtenances in good order, condition, and repair and in a clean and neat condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance and condition of his or her Unit.

In addition, each Owner shall be responsible for all damage to any other Units or to the Common Elements including the Limited Common Elements resulting from his or her failure or negligence to make any of the repairs required by this paragraph. Each Owner shall perform his or her responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors any defect or need for repairs for which the Association is responsible.

(b) The Owner of any Unit to which a Limited Common Element is appurtenant shall keep such Limited Common Elements in a clean and neat condition, and shall be responsible for its repair, maintenance, improvements and reconstruction in accordance with Paragraph 9.3 below.

In the event any Owner shall fail to maintain or keep in good repair his or her Unit and/or Limited Common Elements in a manner satisfactory to the Board of Directors, the Board of Directors after Notice and Hearing shall have the right to maintain, repair, and reconstruct said Unit and/or Limited Common Elements. The cost of such maintenance, repair, and reconstruction shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.5 hereof.

Each Unit and/or Limited Common Element is subject to an easement in favor of the Board of Directors (including its agents, employees, and contractors) for providing the maintenance, repair, and reconstruction in accordance with the above.

9.3 Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment.

9.4 Schedule of Maintenance Responsibilities. Notwithstanding the general provisions for maintenance and repair set forth above, specific maintenance and repair responsibilities and the costs attributable thereto shall, to the extent set forth therein, be determined by the Board of Directors.

9.5 Additions, Alterations, or Improvements by the Owners (Architectural Control). No Owner shall make any structural addition, or alteration, or improvement in or to his or her Unit without the prior written consent of the Board of Directors. No Owner shall paint or alter the exterior of his or her Unit, including the doors, windows, and light fixtures, nor shall any Owner paint or alter the exterior of any Building, without the prior written consent of the Board of Directors.

The Board of Directors shall be obligated to answer any written request by an Owner for approval of a proposed structural addition, alteration, or improvement within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute approval by the Board of Directors of such proposed structural addition, alternation, or improvement.

If any application to any governmental authority for a permit to make any such structural addition, alteration, or improvement in or to any Unit requires execution by the Association, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Association by an authorized Officer, only, without however incurring any liability on the part of the Board of Directors, the Association or any of them to any contractor, subcontractor or materialman on account of such addition, alteration, or improvement, or to any person having claim for injury to person or damage to property arising therefrom.

ARTICLE TEN: DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

10.1 Reservation. The Declarant reserves the following Development and Special Declarant Rights (“Declarant Rights”) which may be exercised, where applicable, anywhere within the Condominium Community:

- (a) To exercise any Declarant Rights reserved herein;
- (b) To maintain signs and advertising on the Common Elements to advertise the Condominium Community;

(c) To use and permit others to use easements through the Common Elements as may be reasonably necessary for construction within the Condominium Community, and for the purpose of discharging Declarant's obligations under the Act and this Declaration;

(d) To appoint or remove any officer of the Association or a member of the Board of Directors during the Period of Declarant Control subject to the provisions of Paragraph 4.6 of this Declaration;

(e) To amend the Declaration and/or the Map in connection with the exercise of any Declarant Rights;

(f) To exercise any other Declarant Rights created by any other provisions of this Declaration;

(g) To, subject to applicable law, amend this Declaration.

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

10.3 Limitations. The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such Declarant Rights shall terminate without further act or deed fifteen (15) years after recording this Declaration. Earlier termination of certain rights may occur by statute.

10.4 Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Declarant Rights without the prior written consent of the Declarant.

10.5 Use by Declarant. The exercise of any Declarant Right by Declarant shall not unreasonably interfere with the access, enjoyment, or use of any Unit by any Owner nor the access, enjoyment, or use of the Common Elements; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

10.6 Models, Sales Offices, and Management Offices. Subject to the limitations set forth in Paragraph 10.3 hereof, the Declarant, its duly authorized agents, representatives, and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as model units, sales, leasing, and/or management offices.

10.7 Declarant's Easements. The Declarant reserves the right for itself and/or its agent to perform repairs and maintenance work on Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repair until such repairs are complete. All work may be performed by the Declarant without the consent or approval of the

Board of Directors. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising under the Act or reserved in this Article.

10.8 Signs and Marketing. The Declarant reserves the right for Declarant to post signs and displays in the Common Elements in order to promote sales of Units. Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

10.9 Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, and maintenance of the Common Elements that has not been represented as property of the Association. The Declarant reserves the right to remove from the Condominium Community (promptly after the sale of the last Unit) any and all goods and improvements used in development, marketing, and construction, whether or not they have become fixtures.

ARTICLE ELEVEN: FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Units within the Condominium Community who qualify as an Eligible Mortgagee as defined by Paragraph 1.21 hereof. To the extent applicable, necessary, or proper, the provisions of this ARTICLE ELEVEN apply to both this Declaration and to the Articles and Bylaws of the Association.

11.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

(a) any material condemnation loss or any casualty loss which affects a material portion of the Condominium Community or any Unit in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

(b) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Association; and

(c) any material judgment rendered against the Association;

(d) any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the owners association appertaining to any unit or (iv) the purposes to which any unit or the common elements are restricted;

(e) any proposed termination of the condominium regime;

(f) any delinquency in the payment of assessments or charges owed by an owner of a unit subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of 60

11.2 Amendment to Documents/Special Approvals.

(a) The consent of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the consent of the Eligible Holders of First Mortgages on Units to which at least fifty-one (51%) of the votes of units subject to mortgages held by such Eligible Holders are allocated shall be required to add to or amend any material provisions of this Declaration or the Articles or Bylaws of the Association. A change to any of the following would be considered material:

- (i) voting rights;
- (ii) increase the Common Expense Assessment by more than twenty-five percent (25%) over the previously levied Common Expense Assessment, assessment liens, or the priority of the assessment liens;
- (iii) reduction in the reserves for maintenance, repair, and replacement of the Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) convertibility of Units into Common Elements or vice versa;
- (vi) expansion or contraction of the Condominium Community, or the addition, annexation, or withdrawal of property to or from the Condominium Community;
- (vii) hazard or fidelity insurance requirements;
- (viii) imposition of any restrictions on the leasing of Units;
- (ix) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- (x) restoration or repair of the Condominium Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents;

(xi) any provision that expressly benefits mortgage holders, insurers, or guarantors;

(xii) rights to use of the common elements;

(xiii) boundaries of any unit;

(xiv) the interest in the general or limited common elements;

(xv) convertibility of units into common elements or fo common elements into units; and

(xvi) establishment of self-management by the condominium association where professional management has been required by any of the agencies

(b) The Association may not take any of the following actions without the consent of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the consent of Eligible Holders of First Mortgages on Units to which at least fifty-one (51%) of the votes of units subject to mortgages held by such Eligible Holders :

(i) Reconstruct or repair the Condominium Community after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents;

(ii) Merge the Condominium Community with any other condominium community;

(iii) Assign the future income of the Association, including its right to receive Common Expenses Assessment;

(iv) Not repair or reconstruct, in the event of substantial destruction, any part of the Common Elements.

(c) Any action to terminate the legal status of the Condominium Community after substantial destruction or condemnation occurs must be agreed to by: (1) Owners to which at least sixty-seven percent (67%) of the undivided interests in the Common Elements and (2) the Eligible Holders of First Mortgages on Units to which at least fifty-one (51%) of the votes of units subject to mortgages held by such Eligible Holders.

(d) Any action to terminate the legal status of the Condominium Community for reasons other than substantial destruction or condemnation occurs must be agreed to by: (1) Owners to which at least seventy-five percent (75%) of the undivided interests in the Common Elements and (2) the Eligible Holders of First Mortgages on Units to which at least fifty-one (51%) of the votes of units subject to mortgages held by such Eligible Holders.

(e) Any action to reallocate interest in the common elements resulting from a partial condemnation or partial destruction of the condominium project must be agreed to by: (1) Owners to which at least sixty-seven percent (67%) of the undivided interests in the Common Elements and (2) the Eligible Holders of First Mortgages on Units to which at least fifty-one (51%) of the votes of units subject to mortgages held by such Eligible Holders.

11.3 Special FHLMC Provisions. Except as provided by statute in the case of a condemnation or substantial loss to the Units and/or Common Elements, unless at least sixty-seven percent (67%) of the Eligible Mortgagees (based on one vote for each first mortgage owner) or Owners owning at least sixty-seven percent (67%) of the undivided interests in the Common Elements other than the Declarant have given their prior written approval, the Association may not:

- (a) By act or omission seek to abandon or terminate the Condominium Community;
- (b) Change the pro rata interests or obligations of any Unit in order to levy assessments, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Unit in the Common Elements;
- (c) Partition or subdivide any Unit;
- (d) Seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements by act or omission.

The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements is not a transfer within the meaning of this Paragraph 11.3(d).

(e) Use hazard insurance proceeds for losses to any condominium property (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of the condominium property.

11.4 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty days after said Eligible Mortgagee receives property notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

11.5 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

ARTICLE TWELVE: DURATION, AMENDMENT, AND TERMINATION OF THE DECLARATION

12.1 Duration. The covenants, restrictions, and obligations of this Declaration shall run with

and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 12.6 below.

12.2 Amendment by Owners. Except as permitted in Paragraph 12.5 hereof and except in cases of amendments that may be executed by the Board of Directors pursuant to Paragraph 8.3 and the Declarant pursuant to Paragraph 11.3, and except as restricted by Paragraphs 11.2, 11.3 and 12.3 hereof, this Declaration, including the Map, may be amended by written agreement by Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Except as provided in Paragraph 8.3 hereof, an amendment may not (a) create or increase Development and/or Special Declarant Rights; (b) increase the number of Units; (c) change the uses to which a Unit is restricted; or (d) change the Allocated Interests of a Unit except by unanimous consent of the Owners.

Any such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The Secretary or Assistant Secretary of the Association shall further certify that originals of such written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in accordance with §38-33.3-217(3) of the Act.

Where a Unit is owned by more than one person, the execution of any amendment shall be valid if executed by any one Owner. Signatures must be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person.

All signatures shall be irrevocable even upon death or conveyance of the Unit, except that if an amendment is not recorded within three years of the date of signature, then the executing Owner or his or her successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation, or Bylaws unless it is commenced within one year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven.

12.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or First Mortgagees, this Declaration, the Map, the Association's Articles of Incorporation or Bylaws, any time within the limitations set forth in Paragraph 10.3 hereof, as follows:

(a) to make nonmaterial changes, such as the correction of a technical, clerical, grammatical, or typographical error or clarification of a statement;

(b) to comply with any requirements of any of the federal government lending agencies (i.e. FNMA, HUD, FHA, VA) or to induce any of the agencies to make, purchase, sell, insure or guarantee First Mortgages;

(c) to comply with any requirements of the Act.

12.4 Consent of Declarant Required. Notwithstanding any other provision in this Declaration to the contrary, and subject to applicable law, any proposed amendment of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment, which consent shall be evidenced by the execution by Declarant of any certificate of amendment.

The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 10.3 hereof.

12.5 Expenses. All expenses associated with preparing and recording an amendment shall be allocated in accordance with §38-33.3-217(6) of the Act.

12.6 Termination. Except in the case of a taking of all of the Units by condemnation, the Condominium Community may be terminated only by an agreement of Owners owning an eighty percent (80%) undivided interest in the Common Elements, and the consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of all of the Eligible Mortgagees within the Condominium Community (based on one vote per mortgage owned), by an instrument(s) duly executed and recorded.

The proceeds of any sale of real estate together with the assets of the Association shall be held by the Association as trustee for Owners and holders of Security Interest upon the Units as their interests may appear as more fully set forth in §38-33.3-218 of the Act.

ARTICLE THIRTEEN: GENERAL PROVISIONS

13.1 Right of Action. The Association and any aggrieved Owner shall have an appropriate right of action against Owners for failure to comply with the Declaration, Bylaws of the Association, Articles of Incorporation, and Rules and Regulations of the Association or with

Decisions of the Board of Directors of the Association which are made pursuant thereto. Owners shall have a similar right of action against the Association.

13.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association, and each Owner, and the heirs, personal representatives, successors and assigns for each of them.

13.3 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision has never been included herein.

13.4 No Waiver. No provision in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

13.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed, in the name of the Owner at such registered mailing address.

All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to: Eric Pallai at 10978 E. Crestridge Circle, Englewood, Colorado 80111, Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Colorado (Change of Registered Agent).

13.6 Conflict. The Documents are intended to comply with the requirements of the Act and the Colorado Nonprofit Corporation Act. If there is any conflict between the documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

13.7 Mergers. The Condominium Community may be merged or consolidated with another condominium community of the same form of ownership by complying with §38-33.3-201(2) of the Act.

13.8 Intentionally Deleted.

13.9 Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provision of this Declaration.

13.10 Numbers and Genders. Whenever used herein, unless the context shall otherwise

**EXHIBIT A
TO THE CONDOMINIUM DECLARATION
OF
Audrey Pointe Condominiums**

**LEGAL DESCRIPTION OF THE REAL PROPERTY
SUBMITTED TO THE CONDOMINIUM DECLARATION OF
AUDREY POINTE CONDOMINIUMS**

**Lots 10 to 15, inclusive, Block 2,
Scherrer's Addition to the City of Denver
City and County of Denver,
State of Colorado**

EXHIBIT B
TO THE CONDOMINIUM DECLARATION OF
Audrey Pointe Condominiums

TABLE OF INTERESTS

Each Unit in the Condominium Community shall have one vote and, subject to the provisions of ARTICLE TWELVE hereof, each Unit is hereby vested with an undivided percentage ownership interest in and to the Common Elements and is subject to a Common Expense Assessment Liability based on the Unit's percentage interest in the Condominium Community. The interest of each Unit is as stated below:

Unit 1	4.0%
Unit 2	5.2%
Unit 3	4.0%
Unit 4	4.0%
Unit 5	5.2%
Unit 6	5.2%
Unit 7	4.0%
Unit 8	4.0%
Unit 9	5.2%
Unit 10	5.2%
Unit 11	4.0%
Unit 12	5.2%
Unit 13	4.0%
Unit 14	4.0%
Unit 15	5.2%
Unit 16	4.0%
Unit 17	4.0%
Unit 18	5.2%
Unit 19	5.2%
Unit 20	4.0%
Unit 21	4.0%
Unit 22	5.2%

EXHIBIT C
TO THE CONDOMINIUM DECLARATION OF
Audrey Pointe Condominiums

EASEMENTS AFFECTING THE COMMUNITY

Easements, notes, covenants, restrictions and rights-of-way as shown on the Plat of Scherrer's Addition to the City of Denver, recorded April 28, 1888 in Plat Book 5, at Page 34C.

Terms, conditions, provisions and obligations contained in Grant of Easement, recorded cotober 28, 1999 at Reception Number 9900187147.

Laundry room lease as evidenced by Abstract of Lease, recorded August 3, 1983, at Reception No. 840502 and Abstract of Lease, recorded November 27, 2000 at Reception No. 2000172139.