

**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR**

MIDTOWN VILLAGE

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**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MIDTOWN VILLAGE**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MIDTOWN VILLAGE (the “**Declaration**”) is made and entered into as of the _____ day of _____, 2024, by MIDTOWN LOFTS LLC, a Colorado limited liability company (the “**Declarant**”).

RECITALS

A. Declarant is the owner of certain real property in Eagle County, Colorado, which is more particularly described as set forth in *Exhibit A* attached hereto and by reference made a part hereof.

B. Declarant desires to create a planned community under the terms of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et. seq.* and any amendments, or modifications of that Act (hereinafter called "CCIOA" or, the “**Act**” (the “**Act**”) on the real estate described in *Exhibit A*, under the name “Midtown Village”. The Declarant hereby declares that all of the Property, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof; their heirs, successors, and assigns.

C. Declarant has caused Midtown Village Association, Inc., a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners’ association, for the purpose of exercising the functions set forth herein.

ARTICLE 1. SUBMISSION/NAMES/DEFINED TERMS

Section 1.1 Submission of Property. Declarant hereby submits the real estate described in *Exhibit A*, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the “**Property**”), to the provisions of the Act, as it may be amended from time to time, and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all the Property described in *Exhibit A* shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions. Notwithstanding the forgoing and/or anything contained in this Declaration to the contrary, no property owned by the Town of Minturn shall be subject to this Declaration, and the same shall hereby be exempt and excluded from the purview of this Declaration. Declarant further declares that this Declaration is made

for the purpose of protecting the value and desirability of the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof.

Section 1.2 Name and Type. The type of common interest Property created hereunder is a planned Property as defined in the Act. The name of the Property is "Midtown Village". The name of the Association is "Midtown Village Association, Inc."

Section 1.3 Defined Terms. Each capitalized term in this Declaration or on the Plat shall have the meaning specified in the Act or as used in the Act, unless otherwise defined in this Declaration or as context requires otherwise:

(a) "**Act**" shall mean the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et. seq.*, as it may be amended.

(b) "**Architectural Review Committee**" or "**Committee**" shall mean the committee appointed by the Declarant or the Board of Directors pursuant to this Declaration for the purpose of administering the architectural approval and design review provisions contained in this Declaration.

(c) "**Articles of Incorporation**" shall mean the Articles of Incorporation of Midtown Village Association, Inc., as filed with the Colorado Secretary of State, as may be amended from time to time.

(d) "**Assessment**" shall include all Common Expense Assessments, Special Assessments, Individual Purpose Assessments, and any other expense levied to a Lot pursuant to this Declaration or the Act, including but not limited to interest, late fees, attorney fees, fines, and costs.

(e) "**Association**" shall mean and refer to Midtown Village Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(f) "**Board**" or "**Board of Directors**" shall mean the body designated in the Governing Documents to act on behalf of the Association.

(g) "**Bylaws**" shall mean the Bylaws of Midtown Village Association, Inc., as may be amended from time to time.

(h) "**Common Elements**" means all the Property as labeled on the Plat, except the Lots, units, and Future Development Parcel, which the Association owns for the common use and enjoyment of the Owners on a non-exclusive basis as provided below. The Common Elements include any unimproved land surrounding the Lots, the easements benefiting the Property as granted in this Declaration or the Plat, the water, sewer and other utility or communication lines and facilities serving the Property which

are not owned by any public entity, any portion of the Common Elements shall also include Limited Common Elements, which are exclusively reserved for use by fewer than all Owners, or as otherwise provided in this Declaration. The Common Elements shall not include any portion of the Property dedicated to the public pursuant to this Declaration or the Plat, including, without limitation, roads, recreation areas, parking area, trails and trails access areas.

(k) **“Common Expense Assessment”** shall mean an Assessment levied against the Lots in the Association to fund the Common Expenses.

(l) **“Common Expense Liability”** shall mean the liability for Common Expenses allocated to each Lot as set forth in Section 4 of this Declaration.

(m) **“Common Expenses”** shall mean any and all of the Association’s costs, expenses and liabilities including, without limitation, costs, expenses and liabilities incurred for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (B) providing facilities, services and other benefits to Owners and their Guests; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created in the Association Documents; (D) levying, collecting and enforcing the Assessments; (E) regulating and managing the Project; (F) operating the Association; and (G) utilities not separately metered and billed directly to Unit Owners; other expenses declared to be Common Expenses pursuant to the Association Documents or the Act, and expenses agreed upon as Common Expenses by the Association; and reserves for any such costs, expenses and liability.

(n) **“Declarant”** shall mean Midtown Lofts LLC, a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder, in compliance with C.R.S. § 38-33.3-304. The Declarant hereby reserves any and all "special declarant rights" and "development rights" as created or set forth in CCIOA and any other rights as set forth herein. Any such rights shall apply to the Property and Future Development Parcels (as defined below) and shall terminate upon the earlier of ten (10) years from the date of recording hereof or as otherwise provided herein. The "Period of Declarant Control" means that period during which the Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board as set forth in Article III hereof.

(o) **“Design Guidelines”** shall mean a manual of design guidelines for the Property, or other design or architectural guidelines, to interpret and/or implement any provisions of Article 6 of this Declaration, specifically, and this Declaration in general, as more fully provided for in Section 6.3 of this Declaration.

(p) **“Future Development Parcels”** and means the property more particularly described on the Plat as Tracts C, D, E which the Declarant may be subject to this Declaration by one or more duly recorded supplemental declarations and, if necessary, supplemental plats, and convert into additional Lots and contemplate future development rights as created or set forth in CCIOA.

(q) **"Governing Documents"** shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, the Design Guidelines and the Rules and Regulations of the Association, as they may be amended from time to time.

(r) **"Improvements"** shall mean and refer to all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, garages, carports, driveways, parking areas, concrete, paving, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, solar equipment, satellite dishes, and exterior air conditioning and water softener fixtures. "Improvements" shall also mean an excavation or fill, the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(s) **"Individual Purpose Assessment"** shall mean expenses incurred by the Association which are for the benefit of any individual Lot, as more fully provided in Section 5.5 of this Declaration.

(t) **"Lot"** shall mean and refer to any of the lots shown on any recorded Plat of the Property, together with all appurtenances thereto and improvements now or hereafter thereon. This term shall have the same meaning as "unit" under the CCIOA. The boundaries of any Lot may be relocated pursuant to C.R.S. § 38-33.3-212. The boundaries of the Lots shall be shown on any recorded Plat of the Property which shall be incorporated herein by this reference. The number of Lots to be developed on the Property is forty-two (42). Declarant reserves the right for itself and any Successor Declarant to expand the Future Development Parcels referred to as Tracts C, D, and E on the Plat and additional Lots.

(u) **"Member"** shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(v) **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Property but excluding those having such interest merely as security for the performance of an obligation. This term shall have the same meaning as "unit owner" under the CCIOA.

(w) **"Person"** shall mean a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other legal entity or any combination thereof.

(x) **"Plat"** shall mean and refer to the map(s) and/or plat(s) of the Property recorded in the records of the Office of the Clerk and Recorder of Eagle County,

Colorado at Reception No. ____ . More than one Plat or supplement thereto may be recorded, and, if so, then the term "Plat" shall collectively mean and refer to all of such maps, plats and supplements thereto.

(y) **"Rules and Regulations"** shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Property and/or clarification of the Governing Documents, including any amendment to those instruments.

(z) **"Special Assessment"** shall mean a Special Assessment levied by the Association from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund.

ARTICLE 2. PROPERTY RIGHTS IN THE COMMON ELEMENTS/EASEMENTS

Section 2.1 Easement for Encroachments. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by the original construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist.

Section 2.2 Blanket Easements.

(a) *Maintenance Easement.* An easement is hereby granted to the Association, and any of its duly authorized agents, contractors or consultants, to enter in or to cross over the Common Area, any Lot, to perform the duties of operation, installation, maintenance, repair and replacement of the Common Area and any Lot as provided for in this Declaration.

(b) *Utility Easement.* A blanket easement is granted to the Association, and any of its duly authorized agents, contractors or consultants, upon, across, over and under the Common Area and all of the Lots for ingress, egress, installation, replacing, repairing and maintaining any utilities, including but not limited to water, including potable and/or non-potable water systems, sewer, gas, telephone, electricity, and cable, to the extent the Association is responsible for such utilities. Notwithstanding anything to the contrary contained in this paragraph, after the installation of the initial utilities on the Common Area and the Lots. No sewers, electrical lines, water lines or other utilities may thereafter be installed or relocated on the Common Area or the Lots except as approved by the Board of Directors. The easements provided for in this paragraph shall in no way affect any other prior recorded easements on the premises.

Section 2.3 Access. For the purpose of performing any of the functions or obligations required or permitted by this Declaration, and for performing inspections related thereto, the Association, through of its duly authorized agents, contractors or consultants, shall have the right, after reasonable notice to the Owner or occupants thereof, and during regular

business hours, to enter upon the exterior portions of any Lot and such entry shall not be deemed a trespass. In emergency situations, the Association, and any of its duly authorized agents, contractors or consultants, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing any of the functions or obligations required or permitted by this Declaration, including but not limited to ingress, egress, repairs or maintenance authorized under this Declaration, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 2.4 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated into any Lot with the consent or at the request of the Owner thereof or an agent, contractor, or subcontractor of such Owner shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Lot of any other Owner, and/or the Common Area, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Lot as applicable. The Association may pay any sums necessary to eliminate any lien filed against Common Area not benefitting from the labor and/or materials furnished, and all sums paid shall be an Assessment against the Lot of the Owner or Owners for whom the labor and/or materials were furnished.

Section 2.5 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration;
- (b) The right of the Association to adopt Rules and Regulations governing the use of the Common Area and the Lots;
- (c) The right of the Association to borrow money for the purpose of maintaining or improving the Common Area, and for other such purposes deemed appropriate or necessary by the Board of Directors to fulfill the Association's obligations, duties or authority as set forth in the Governing Documents;
- (d) The right of the Association, upon approval of Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant, to mortgage the Common Area, if any, as security for any loan or liability incurred by the Association, provided, that the rights of such mortgagee shall be subordinate to the rights of the Owners;
- (e) The right of the Association to assign its right to future income, including the right to assign its right to receive Assessments;

(f) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, or similar interest through, over or in the Common Area;

(g) The right of the Association to transfer or convey ownership of the Common Area, or any portion thereof, subject to the prior approval of Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant;

(h) The right of the Association to close portions of the Common Area for maintenance, repair, replacement and improvement;

(i) The right of the Association to change the use of, and/or to add or remove improvements to or from the Common Area; and

(j) The right of the Association to provide trash removal service to all or any portion of the Property, in which case, the Owners of any Lots for which trash service is provided shall be required to use such trash service provided by the Association and shall not be entitled to engage his or her own trash removal service.

Section 2.6 Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, his right of enjoyment to the Common Area to the members of his family, his tenants, or others who reside on the Owner's Lot. If an Owner delegates such rights to use the Common Area to tenants or others who reside on the Owner's Lot, the Owner shall not be entitled to use the Common Area.

Section 2.7 Future Development and Views. Owners acknowledge that existing views, if any, of the immediate and surrounding areas and mountains may be subject to change or elimination as a result of future development of residential and non-residential uses, road construction, tree growth and landscaping. Neither the Declarant nor the Association guarantees or represents that any view over and across the Lots and/or Lots or other Improvements, or that any open space, will be preserved without impairment, nor is there any obligation to relocate, prune, or thin trees or other landscaping. The Declarant has the right to add Improvements, including but not limited to trees, walls, fences, berms, structures, signs, lighting, water features and landscaping, from time to time, without regard to any view impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Neither the Declarant nor the Association assumes any responsibility for any representation or promise made by any other party, including but not limited to any Builder, sales counselor, independent broker or other agent or employee of a homebuilder, with regard to views. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Property, views of or from the Property, the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the

foregoing and waives and releases any claim against the Declarant and the Association arising out of or associated with any of the foregoing.

ARTICLE 3. THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Association. The Midtown Village Association, Inc. shall operate as a Colorado non-profit corporation pursuant to its Articles of Incorporation and Bylaws, which may include, without limitation, provisions for the indemnification of officers and directors.

Section 3.2 Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If additional Lots are added to the Association, membership shall automatically be expanded.

- (a) One Vote per Lot. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth herein and in the Bylaws, and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Owner.
- (b) Natural Person. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse.
- (c) Legal Entity. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Board.
- (d) Right to Vote. Members shall have the right to cast votes on all matters to be voted on by the members, as provided in the Association's Articles of Incorporation and Bylaws.

Section 3.3 Classes of Membership. The Association shall have two classes of membership, Class "A" and Class "B".

- (a) Class "A". The Class "A" Members shall be all Owners of Lots, except Class "B" Members.
- (b) Class "B". The Class "B" Member shall be the Declarant.

Section 3.4 Voting Rights.

- (a) Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership;

- (b) Class “B” Member shall be entitled to fifty one percent (51%) of the voting rights in the Association.

Section 3.4 Duration of Class B. The Class “B” membership shall cease and be converted to Class “A” membership upon the earlier of the following:

- a. When 90% of the Lots permitted under the Development Plan filed with Eagle County have been conveyed by Declarant to Owners, and certificates of occupancy have been issued for residences constructed thereon;
- b. Ten years from the date of the recording of this Declaration; provided that the 10-year period for conversion shall be extended an additional five years unless a majority of the Voting Members representing Class “A” Members at a special meeting held for such purpose at least 30 days, but not more than 90 days, prior to expiration of the 10-year period, vote not to extend the 5-year period, or
- c. When, in its discretion, the Declarant so determines.

Section 3.5 Conversion of Class “B” Membership. From and after the conversion of the Class “B” membership, the Class “B” member shall be deemed to be a Class “A” member entitled to one vote for each Lot in which it holds the interest required for membership hereunder. Notwithstanding the above provision, the Declarant shall have the right to disapprove of the actions of the Board and committees as provided in the Bylaws.

Section 3.6 Transition to the Association. In the event Class “B” membership has not terminated when more than 80% of the Lots permitted under the Development Plan filed with Eagle County have been conveyed by Declarant, the Board shall form a “Transitional Advisory Committee.” No later than when 90% of the Lots are owned as provided in this Declaration.

Section 3.7 Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Lot owned by a Class “A” Member shall be exercised by Voting Members, as described in this Declaration, the Articles, and the Bylaws. In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-owners determine among themselves and advise the Secretary of the Board in writing prior to any meeting. Absent such advice, the Lot’s vote shall be suspended if more than one Person seeks to exercise it.

Section 3.8 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three (3) years and shall be subject to cancellation by the Association on thirty (30) days’ notice, with cause, and without a cancellation fee. The Association

shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Association.

Section 3.9 Right to Notice. Notice of matters affecting the Property shall be given by the Association or through access to Association records, as further provided in the Bylaws or as otherwise provided by the Board of Directors.

Section 3.10 Indemnification. To the full extent permitted by law, each officer, director and committee member of the Association, as well as each volunteer whose activities on behalf of the Association have been approved or directed by the Association, shall be and hereby are indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duties.

Section 3.11 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property. Notwithstanding, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not required to provide safety or security services and shall have no duty to provide any specific level or standard of safety or security in the Property. Furthermore, the Association does not guarantee that non-residents will not gain access to the Property and commit criminal acts in the Property, nor does the Association guarantee that criminal acts in the Property will not be committed by residents. Regardless of any measures or actions the Association may, but is under no obligation to, take related to safety, it shall be the responsibility of each Owner, at all times, to protect his or her person and property and all responsibility to provide such safety and/or security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide safety or security or the in effect.

ARTICLE 4. BOARD OF DIRECTORS

Section 4.1 Authority of the Board of Directors. The affairs of the Association shall be managed by a Board of Directors. Except as otherwise provided in the Governing Documents, the Board of Directors may act in all instances on behalf of the Association.

Section 4.2 Termination of the Period of Declarant Control. Upon the termination of the Period of Declarant Control, the Declarant shall call a meeting for the purpose of turning over administration responsibilities to the Board.

ARTICLE 5. COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 5.1 Allocated Interests. The Common Expense Liability in the Association allocated to each Lot are set as follows:

(a) Unless otherwise provided in this Declaration, the Common Expense Liability allocated to each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Property from time to time.

(b) If any Lots are added or withdrawn from the Association then the formula shall be adjusted to account for those Lots added or withdrawn.

Section 5.2 Creation of Lien and Personal Obligation to Pay Assessments. Each Lot Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, and such other Assessments as imposed by the Association.

(a) Such Assessments, including but not limited to fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The personal obligation to pay any past due sums due to the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of any Assessment by waiver of the use or enjoyment of the Common Area, or by abandonment of the Lot against which the Assessment is made.

(b) The Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited, credit card convenience fees from whatever source, shall be a charge on the respective Lot generating such charges and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

(c) All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association is not properly exercising their duties and powers under this Declaration. Except as provided in this Declaration, all Assessments shall be assessed against all Lots based on the Common Expense Liability allocated to each applicable Lot, as set forth in this Declaration.

Section 5.2 Basis for Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. Unless otherwise provided herein, Common Expense Assessments shall be apportioned among the Lots in accordance with the Common Expense Liability allocated to each Lot as set forth herein. At the

earlier of such time as the issuance of a temporary certificate of occupancy or a final certificate of occupancy for a Lot shall thereafter be subject to Assessments as fully set forth herein.

Section 5.3 Annual Assessment. The budget for annual Common Expense Assessments shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by Owners representing at least sixty-seven percent (67%) of the total Association vote. In the event the budget for annual Common Expense Assessments is vetoed as provided herein, the budget for annual Common Expense Assessments last proposed by the Board and not vetoed by the Owners shall be continued until a subsequent budget for annual Common Expense Assessments proposed by the Board is not vetoed by the Owners. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy a Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 5.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. A proposed Special Assessment will be ratified unless Owners representing more than eighty percent (80%) of the total votes in the Association vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the subject services or materials.

Section 5.5 Individual Purpose Assessments. The Association shall have the right to add to any Owner's Assessment as an Individual Purpose Assessment, without the need of going through the budget ratification process as provided for herein, the following:

(a) Those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: trash removal services provided through the Association; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;

(b) Any extraordinary maintenance, repair, improvement or replacement costs of any area which the Association maintains required on fewer than all the Lots;

(c) Any extraordinary insurance costs incurred as a result of the value of a particular Owner's Lot or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);

(d) All fines and costs assessed against an Owner pursuant to the Governing Documents; and

(e) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 5.6 Application of Payments. All payments received on an account of any Owner or the Owner's Lot shall be applied in accordance with C.R.S. 38.33.3-316.3(4).

Section 5.7 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within fifteen (15) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Owner's annual Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Owner's annual Common Expense Assessment.

(c) Further, the Association may foreclose its lien and/or bring an action at law or in equity, or all of the same, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor. Likewise, the obtaining of a money judgment shall not preclude the foreclosure of the Association's lien so long as the judgment remains unsatisfied.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien

security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.8 Lien Priority. The lien of the Association under this Article is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on a Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 5.9 Working Capital Fund. Each Person who purchases a Lot from the Declarant shall make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Common Expense Assessment. Said contribution shall be collected and transferred to the Association at the time of closing of the sale of each Lot and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payment of Assessments as the same become due.

Section 5.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and prepayment of or provision for reserves shall be retained by the Association as reserves or in such other funds as the Board of Directors may direct and need not be paid to the Owners or credited to them to reduce future Assessments.

ARTICLE 6. ARCHITECTURAL REVIEW

Section 6.1 Composition of the Architectural Review Committee and Appointment. The Architectural Review Committee will consist of three (3) or more natural persons, or a separate entity such as an architectural firm or affiliate of the Declarant, appointed by the Board of Directors; provided, however, that until all of the Lots That May Be Included have been conveyed to the first Owner thereof (other than the Declarant), the Declarant may appoint the Architectural Review Committee. If no Architectural Review Committee is appointed, the Board of Directors shall act as the Architectural Review Committee. The power to "appoint" the Architectural Review Committee, as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the

Architectural Review Committee on the occurrence of a vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time at the discretion of the Board of Directors.

Section 6.2 Architectural Review Requirements; Authority of the Architectural Review Committee.

(a) No Improvement may be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Lot or Lot, unless the Improvement is in full compliance with all provisions of the Governing Documents. Prior to constructing, erecting, placing, altering, planting, applying, installing or modifying an Improvement upon any Lot or Lot, the Owner of the Lot or Lot or the board of directors must submit plans and specifications for the proposed Improvement to the Architectural Review Committee for review and consideration, and then receive approval in writing from the Architectural Review Committee, all in accordance with the Design Guidelines and/or Rules and Regulations.

(b) The Architectural Review Committee shall exercise its reasonable judgment in an attempt to provide for each proposed Improvement to generally harmonize with the existing surroundings, residences, landscaping and structures.

(c) In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) pay an architectural review fee and/or reimburse the Architectural Review Committee for the actual expenses incurred by the Architectural Review Committee in the review and approval process. Such amounts, if any, shall be collectible by the Association in the same manner as Assessments.

Section 6.3 Design Guidelines. The Architectural Review Committee may propose Design Guidelines or revisions or amendments thereto, which may be approved by the Board of Directors, at any time and from time to time. Without limiting the generality of the foregoing, any such Design Guidelines may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Architectural Review Committee, may state procedural requirements, or may specify acceptable Improvements that may be installed without prior approval of the Architectural Review Committee.

Section 6.4 Procedures. The Architectural Review Committee will review and approve in writing (which may be with conditions and/or requirements), or disapprove, each request for architectural approval within thirty (30) days after the complete submission to the Architectural Review Committee of the plans and specifications and other materials and information which the Architectural Review Committee may require in conjunction therewith in accordance with the design review procedures set forth in the Design Guidelines. If the Architectural Review Committee fails to review and approve in writing (which may be with conditions and/or

requirements), or disapprove, a request for architectural approval within thirty (30) days after the complete submission of the plans and specifications and other information requested with respect thereto, such request shall be appealed to the board of directors as set forth in Section 6.5 below. .

Section 6.5 Vote and Appeal. If the Board of Directors is not acting as the Architectural Review Committee, an Owner whose plans have been disapproved or conditionally approved by the Architectural Review Committee may appeal any decision of the Architectural Review Committee to the Board of Directors by submitting a written appeal to the Board of Directors within thirty (30) days of the date of such disapproval or conditional approval. The Board of Directors shall review the decision of the Architectural Review Committee pursuant to the criteria set forth in this Article and the Design Guidelines. Any decision of the Architectural Review Committee may be overruled and reversed on appeal by a majority of the Board of Directors by a written decision setting forth the reasons for the reversal when the Board of Directors concludes that the Architectural Review Committee's decision was inconsistent with the criteria set forth in this Article and/or the Design Guidelines.

Section 6.6 Commencement and Completion of Construction. All improvements approved by the Architectural Review Committee must be commenced within six (6) months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Architectural Review Committee, unless the Architectural Review Committee gives a written extension for commencing the work. Additionally, except with written Architectural Review Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner (or the owners association performing the work, pursuant to Section 6.2(a) of this Declaration), all work approved by the Architectural Review Committee shall be completed within twelve (12) months of commencement, or within such time as otherwise specified in the approval from the Architectural Review Committee.

Section 6.7 Inspection of Work. The Architectural Review Committee and the Board of Directors have the right to inspect any Improvement at any time, including prior to or after completion, to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article.

Section 6.8 Variances. The Architectural Review Committee, in its sole discretion, may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration or the Design Guidelines.

Section 6.9 Waivers. The approval or consent of the Architectural Review Committee to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Architectural Review Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 6.10 Liability. Neither the Declarant, the Association, the Board of Directors, the Architectural Review Committee, nor any agent, representative, affiliate, designee, consultant or contractor of any the same (collectively, the "**Released Parties**") are liable or shall be liable to any Person by reason of any action, including but not limited to failure to act, approval (which

may be with conditions and/or requirements), disapproval, or failure to approve or disapprove, in regard to any matter whether for damage or in equity. In reviewing or approving any matter, the Released Parties are not responsible for any issue related to the Improvements, whether structural or otherwise, and whether submitted for review or otherwise. The Released Parties are not responsible for any matter related to safety. The Released Parties are not responsible for the conformance of Improvements with applicable law or compliance with any other standard or regulation, and any approval (which may be with conditions and/or requirements) of any Improvement by the Architectural Review Committee will not be deemed an approval of any such matters, will not be deemed to represent that the Improvement conforms to applicable law or complies with any other standards or regulations, and will not constitute a warranty by the Released Parties to any applicant of the adequacy of design, workmanship or quality of such work or materials for any applicants' intended use. The Released Parties shall not be held liable for matters related to their decisions including, but not limited to soil conditions, ground water, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not any of the Released Parties have approved or featured such contractor as a builder in the Property; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Released Parties shall be defended and indemnified by the Association as provided in Section 3.7 of this Declaration. The Architectural Review Committee will not make any investigation into title, ownership, easements, rights-of-way, or other rights appurtenant to property with respect to architectural requests and shall not be liable for any disputes relating to the same. No Person is a third-party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by, the Released Parties. Each Owner (i) waives and releases the Released Parties from all claims related to approval or disapproval of any Improvements and (ii) waives and releases all claims against the Released Parties. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The Released Parties shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Released Parties have no personal liability with respect to any contract or other commitment made or action taken on behalf of the Released Parties.

Section 6.11 Builders Exemption. Notwithstanding anything to the contrary, as long as, and to the extent that, a Builder has received written architectural approval from the Declarant, such Builder shall, as to Declarant-approved Improvements, be exempt from this Article and all provisions of this Declaration that require Architectural Review Committee review and/or approval.

ARTICLE 7. MAINTENANCE AND SERVICE RESPONSIBILITIES

Section 7.1 Association Maintenance and Service Responsibilities.

(a) The Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities. The Association

shall maintain, repair, replace, and keep in good repair in a workmanlike manner as a Common Expense the Common Area and all Improvements thereon.

Section 7.2 Owner's Maintenance Responsibility. Unless otherwise provided, the maintenance, repair and replacement of each Lot and the Improvements thereon shall be performed by the Owner thereof at such Owner's sole cost and expense-. Each Lot shall be maintained in a clean, slightly and wholesome condition.

Section 7.3 Inspection, Repair and Replacement of Designated Owner or Owners Association Maintenance Components. In the event any Owner shall fail to perform the maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Association, the Association may, if said failure continues for a thirty (30) day period after written notice from the Association to said Owner enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or reconstruction, the cost of which shall be the obligation of the Owner. The Board of Directors may extend the time period set forth in this Section, in its sole discretion, if completion of the maintenance, repair or reconstruction within the timeframe provided herein is unreasonable or impracticable given the circumstances in any particular instance. Notwithstanding the above, if an Owner's failure to perform its maintenance, repair and/or reconstruction obligations poses an immediate threat to persons or property or creates an emergency situation such that providing thirty (30) days' notice is impossible or impracticable, the Association may immediately perform any or all of such maintenance, repair or reconstruction as necessary, the cost of which shall be the obligation of the Owner. In any such emergency situation, the Owner of the affected Lot shall be notified as soon as reasonably possible. If the work done by the Association was otherwise the obligation of the Owner of the Lot, such costs shall be added to and become a part of the Assessment to which such Owner is subject, as an Individual Purpose Assessment, shall become a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

Section 7.4 Owner's Negligence. If the Board determines that the need for maintenance or repair of any portion of the Common Area, any Lot or otherwise is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Lot, which shall become a lien against the Lot, and shall be collected as an Individual Purpose Assessment and as provided in this Declaration for the collection of Assessments.

ARTICLE 8. INSURANCE

Section 8.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 8.2 Real Property Insurance on the Common Area.

(a) The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Area, as more fully provided herein, and the other property of the Association.

(b) All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and their successors and assigns, which shall provide that the loss, if any, thereunder shall be payable to the Association for the use and benefit of such first mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Eagle County, Colorado.

(c) The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Property from the Board of Directors.

(d) The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent one hundred percent (100%) of the replacement value of all facilities in the Common Area, including machinery and equipment that are part of the Common Area, except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

(e) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

(f) The Association shall obtain property damage insurance in accordance with C.R.S. 38-33.3-313(2) to maintain any buildings containing Lots with horizontal boundaries.

Section 8.3 Liability Insurance. The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering the Common Area in such limits as the Board may from time to time determine, but not in any amount less than a combined single limit of \$1,000,000.00, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Common Area.

Section 8.4 Fidelity Insurance. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the part of its officers, directors, agents, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity insurance shall be in an amount at least covering the Association's reserves plus three months' worth of Assessments.

Section 8.5 Workers Compensation. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 8.6 Director and Officer Liability Insurance. The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers. Such insurance should include coverage for claims brought seeking both monetary and/or non-monetary damages.

Section 8.7 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 8.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, feasible and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days prior written notice to all of the Owners, holders of first mortgages on any of the Lots and the Association.

(d) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first mortgages on the Lots at least ten (10) days prior to expiration of the then current policies.

(e) All liability insurance shall be carried in blanket form naming the Association, and the manager or managing agent, if any, of the Association as insured.

(f) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(g) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner, only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or

who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 8.9 Insurance Obtained by Owners. Unless otherwise provided, each Owner shall be responsible for maintaining insurance with sufficient limits to cover his Lot and all Improvements thereon. Such insurance shall include, but may not be limited to, furnishings and personal or other property in or on the Lot and liability insurance for injury, death or damage in or upon the Lot. Any such policy shall contain waivers of subrogation and shall be written so that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

Section 8.10 Insurance Premium. Insurance premiums for insurance carried by the Association shall be a Common Expense to be included as a part of the annual Common Expense Assessment levied by the Association.

Section 8.11 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage.

Section 8.12 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board of Directors, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 8.13 Adjustments by the Association. Any loss covered by an insurance policy carried by the Association shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a mortgage on any Lot. The Association shall hold any insurance proceeds in trust for the Association, Owners and such mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) pursuant to this Declaration.

Section 8.14 Duty to Repair. Any portion of the Common Area for which insurance is required to be carried by the Association under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association.

Section 8.15 Condemnation and Casualty Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners,

the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

Section 8.16 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area, unless the damage is the liability of an Owner, his family, guests, or invitees, as set forth in this Declaration. The Owner shall then be responsible for such deductible amount, and the Association shall seek reimbursement of the deductible amount, which in the case of an Owner, shall be collected as an Individual Purpose Assessment in compliance with and under the terms of this Declaration.

(b) The Owner shall pay or absorb the deductible for any loss to a Lot unless the loss is caused by the negligent or willful act or omission of the Association, another Owner, another Owner's family, guests or invitees, in which case the Association shall pay the deductible pursuant to this Section. The Association may but shall not be obligated to seek the deductible from such Owner which shall be collected on behalf of the Owner suffering the loss as an Individual Purpose Assessment of the other Owner, as provided in this Declaration for the collection of Assessments.

Section 8.17 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. Notwithstanding the budget ratification procedure set forth in this Declaration, the insurance Assessment shall be ratified unless vetoed by Members holding at least eighty percent (80%) of the total votes entitled to be cast in the Association pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 8.19 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact per this Declaration. Furthermore, if so requested, the Owner shall execute a separate instrument specifically setting forth this appointment.

ARTICLE 9. USE RESTRICTIONS

Section 9.1 Flexible Application of the Subsequent Covenants and Restrictions. Except as otherwise provided in this Declaration, all Lots within the Property shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 9.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (c) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (d) All fines imposed are collectable as Assessments.

Section 9.3 Nuisances. No nuisance shall be permitted within the Property, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot, the Common Area or any portion of the Property by residents.

Section 9.4 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Board of Directors.

Section 9.5 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Property which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Property which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Property except with the prior written approval of the Architectural Review Committee, or as set forth in the Rules and Regulations, which may limit the hours of operation of light and/or sound devices.

Section 9.6 No Hazardous Activities. No activity shall be conducted on, and no Improvement shall be constructed on any Property within the Property which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Property. No open fires shall be lighted or permitted on any Property within the Property except in a contained barbeque Lot while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition on his Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 9.7 Maintenance of Grade and Drainage. The grading upon each Lot shall be maintained by the Owner thereof formed for any portion of the Property which is responsible for the maintenance of the grading on such Lot at the slope and pitch fixed by the final grading thereof. No Owner shall interfere in any way with the established drainage pattern over any real property maintained by the same, from adjoining or other real property. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading on the Lot is completed by the builder of the structure(s) on the Lot in accordance with the Property's lot grading plan as approved by Eagle County or the Town of Minturn. Any Owner who changes the established drainage on his or her Lot, as applicable, may void warranties applicable to affected components of the structure(s) on the Lot or property and shall be liable for all costs and expenses of repairing such changes, or any costs, liabilities, damages or causes of action arising out of such changes. Each Owner shall hold harmless the Association for any and all damage to any party caused by any change to the established drainage on the Owner's Lot as applicable.

Section 9.8 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan of the Property, Rules and Regulations concerning and governing the Property, or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 9.9 Use of the Words "Midtown" and "Midtown Village Association". No resident or Owner shall use the words "Midtown Village" or "Midtown Village Association, Inc." or the logo of the Property or the Association, if any, or any derivative thereof, in connection with any goods, materials or services without the prior written consent of the Association.

ARTICLE 10. DISPUTE RESOLUTION PROCEDURES

Section 10.1 Definitions Applicable to this Article 10. For purposes of this Article 10 only, the following terms have the meanings set forth in this Section 10.1:

(a) **"JAG"** means the Judicial Arbiter Group, or any other Person agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of the Judicial Arbiter Group under this Declaration with a minimum of ten (10) years' experience in the subject matter of the dispute. In the event that the Judicial Arbiter Group becomes unwilling or unable to perform its functions under this Declaration, JAG shall refer to any

organization in Eagle County or the Denver Metropolitan Area designated by the Declarant that specializes in the provision of impartial mediation and arbitration services and that has a minimum of ten (10) years' experience in the provision of such services.

(b) **"Bound Party"** means each of the Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article 10. Notwithstanding the foregoing, "Bound Party" does not include any of the parties identified in this subsection (b) if such parties have jointly entered into a separate written agreement providing for dispute resolution applicable to the Claim; in such circumstance, the dispute resolution mechanism set forth in such separate written agreement between such parties shall apply with respect to such Claim unless the parties mutually agree to submit such Claim to the provisions of this Article 10.

(c) **"Claimant"** means any Bound Party having a Claim.

(d) **"Claim"** means, except as exempted by the terms of this Article 10, (i) any claim, grievance or dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Bound Party under any of the Governing Documents; or (ii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

(e) **"Notice"** means the written notification given by a Claimant to a Respondent and which shall comply with the requirements of subsection 10.5(a).

(f) **"Party"** means the Claimant and the Respondent individually; "Parties" means the Claimant and the Respondent collectively.

(g) **"Respondent"** means any Bound Party against whom a Claimant asserts a Claim.

(h) **"Termination of Mediation"** means a period of time expiring thirty (30) days after submission of the matter to mediation (or within such other time as determined by the mediator or agreed to by the Parties) and upon the expiration of which the Parties have not settled the Claim.

(i) **"Termination of Negotiations"** means a period of time expiring thirty (30) days after the date of the Notice (or such other period of time as may be agreed upon by the Parties) and upon the expiration of which the Parties have not resolved a Claim.

Section 10.2 Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.

(a) Each Bound Party agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit any Claims to the procedures set forth in Section 10.5.

(b) By acceptance of a deed to a Lot, each Owner agrees to abide by the terms of this Article 10.

(c) Any applicable statute of limitation shall apply to the alternative dispute resolution procedures set forth in this Article 10.

Section 10.3 Commencement or Pursuit of Claim Against Bound Party.

(a) A Bound Party may not commence or pursue a Claim against any other Bound Party except in compliance with this Article 10.

(b) Prior to any Bound Party commencing any proceeding to which another Bound Party is a party, the Respondent shall have the right to be heard by the Claimant, and to promptly access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

Section 10.4 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties are subject to the provisions of this Article 10. Notwithstanding the foregoing, unless all Parties otherwise agree, the following are not Claims and shall not be subject to the provisions of this Article 10:

(a) Any action or suit by the Association regarding the imposition or collection of Assessments or other charges levied by the Association pursuant to this Declaration, including actions to foreclose Assessment liens;

(b) Any action or suit by the Association or the Declarant to enforce any provisions of the Governing Documents, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary;

(c) Counterclaims or defenses to claims brought by the Association in proceedings instituted against any of them;

(d) Any suit between or among Owners, which does not also include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(e) Any suit in which any indispensable party is not a Bound Party.

Section 10.5 Mandatory Procedure.

(a) *Notice.* Prior to proceeding with any Claim against a Respondent, each Claimant shall give a Notice to each Respondent, which Notice shall state plainly and concisely:

(i) The nature of the Claim, including all Persons involved and Respondent's role in the Claim;

(ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) The proposed remedy; and

(iv) The fact that Claimant will give the Respondent an opportunity to inspect all property and Improvements potentially involved with the Claim, and that Claimant will meet with Respondent within a reasonable amount of time after such inspection to discuss in good faith ways to resolve the Claim.

(b) *Negotiation and Mediation.*

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

(ii) Upon the Termination of Negotiations, Claimant has thirty (30) days to submit the Claim to mediation under the auspices of JAG in accordance with the rules of JAG in effect on the date of the Notice that is provided for in subsection 10.5(a).

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant waives the Claim, and Respondent will be released and discharged from any and all liability to Claimant on account of such Claim.

(iv) Any settlement of the Claim through mediation must be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator must issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Each Party will bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

(vi) If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement,

then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 10.5(a). In such event, the Party taking action to enforce the agreement will recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including attorneys' fees and court costs.

(c) *Binding Arbitration.*

(i) Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant may initiate final, binding arbitration of the Claim under the auspices of JAG in accordance with the rules of JAG in effect on the date of the Notice that is provided for in Section 10.5(a) of this Declaration.

(ii) If the Association is the Claimant and the Claim the Association is initiating is a construction defect action, as defined in §38-33.3-303.5(1)(b), C.R.S., the Association shall follow the notice procedures and obtain the Owner approval required by §38-33.3-303.5, C.R.S., prior to initiating final, binding arbitration of such Claim.

(iii) Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, one arbitrator who has expertise in the areas of dispute, which may include legal expertise if legal issues are involved, will arbitrate the dispute.

(iv) In any action brought pursuant to this Article, the prevailing Party shall recover from the other Party all costs and expenses associated with such proceedings, including reasonable attorney's fees. For purposes of this Article, "prevailing party" shall mean the party in whose favor a judgment, decree, or final order is rendered, either by an arbitrator or the court, after appeal, if any. In the event both Parties prevail on one or more Claims, the prevailing party shall mean the net winner of a dispute, taking into account the Claims pursued, the Claims on which the pursuing party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other Party. Further, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

Section 10.6 Award. The award of the arbitrator must be accompanied by detailed written findings of fact and conclusions of law. Except as required by applicable law or for confirmation of an award, neither Party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties.

ARTICLE 11. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 11.1 Development Rights. The Declarant hereby reserves for itself and its successors and assigns, the following rights, herein after the “Development Rights”:

- (a) The right to create Lots, Condominium Units or Common Area within the Property;
- (b) The right to subdivide Lots or convert Lots to Common Area; and
- (c) The right to withdraw real estate from the Property; and
- (d) The right to add real estate to the Property; and
- (e) The right to develop the Future Development Parcels.

Section 11.2 Special Declarant Rights. In addition to the Development Rights reserved above, the Declarant further reserves those rights granted to or reserved by the Declarant as hereinafter set forth or as otherwise set forth in this Declaration or the Act for the benefit of the Declarant, including but not limited to the following acts (collectively, the “**Special Declarant Rights**”):

- (a) To build and complete Improvements in the Property;
- (b) To exercise any Development Right;
- (c) To maintain sales offices, construction offices, management offices, and signs advertising the Property and sale of Lots and/or Condominium Units;
- (d) To use easements through the Common Area for the purpose of making Improvements within the Property or within real property which may be added to the Property;
- (e) To grant or create rights-of-way or easements for purposes including but not limited to access, utilities, drainage, water, including potable and/or non-potable water systems, and other purposes incidental, complimentary or supplementary to the development and sale of the Property located in or across Lots owned by the Declarant or the Common Area, provided such easements do not create a permanent, unreasonable interference with the rights of any Owners at the time such right-of-way or easement is created;
- (f) To make the Property subject to a master association;
- (g) To merge or consolidate the Property with a common interest Property of the same form of ownership;

(h) To appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control;

(i) To convert any Lot or other portion of the Property in the Property owned by the Declarant into Common Area;

(j) To record a Subassociation Declaration against all or any portion of the Property owned by the Declarant, or if not owned by the Declarant, with the consent of the Owner thereof; and

(k) To perform any other right of the Declarant set forth in this Declaration.

Section 11.3 Exercise of Development Rights or Special Declarant Rights. All of the Development Rights and Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Property. The Declarant may exercise any or all of the Development Rights or Special Declarant Rights at any time and from time to time. Unless otherwise provided herein, the Development Rights and Special Declarant Rights shall terminate twenty (20) years from the date of the recording of this Declaration, unless surrendered by the Declarant prior to that date by the recording of a written statement that the Declarant has surrendered any such Development Rights or Special Declarant Rights.

Section 11.4 Subdivision or Replatting of Lots. The Declarant may subdivide or replat any Lot(s) and/or Condominium Unit(s) owned by the Declarant in the Property. Without limiting the generality of the foregoing, the Declarant reserves the right to move any lots line(s) on Lots(s) and/or Condominium Unit(s) owned by the Declarant for the purpose of accommodating Improvements which are constructed or are to be constructed. Any subdivision or replatting of any Lot(s) and/or Condominium Unit(s) may increase the number of Lots in the Property, as long as the total number of Lots That May be Included is not exceeded.

Section 11.5 Subassociation Declarations. The Declarant may record a Subassociation Declaration against all, or any portion of the Property then owned by the Declarant, or with the consent of the then Owner of the portion of the Property, if not owned by the Declarant, which may contain additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes or other provisions to be imposed on that portion of the Property described therein.

Section 11.6 Rights Transferrable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the real property records of Eagle County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners or any holders of a security interest on any Lot. Any rights created or reserved under this Article or the Act for the benefit of the Declarant may also be transferred to the Association by an instrument describing the right transferred and recorded in the real property records of Eagle County, Colorado. Such instrument shall be executed by the transferor Declarant and the

Association as transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners or any holders of a security interest on any Lot.

Section 11.7 No Further Authorizations Needed. The consent of Owners or holders of security interests on the Lots shall not be required for the exercise of any reserved rights, and the Declarant or its assigns may proceed without limitation at its sole option. The Declarant or its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. The Declarant or its assigns shall not be obligated to exercise any reserved rights or to expand the Property beyond the number of Lots initially submitted.

ARTICLE 12. MISCELLANEOUS AND GENERAL PROVISIONS

Section 12.1 Compliance and Enforcement.

(a) The Association may enforce all applicable provisions of this Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) Imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot;

(ii) Suspending an Owner's voting rights during any period in which the Owner shall be in default in the payment of any Assessment, including interest, fines, late fees, attorney fees and costs, levied by the Association;

(iii) Suspending an Owner's voting rights for a period not to exceed sixty (60) days or during any period of violation, whichever is greater, for the violation of any other provision of the Governing Documents other than the non-payment of Assessments;

(iv) Exercising self-help or taking action to abate any violation of the Governing Documents;

(v) Requiring an Owner at the Owner's expense, to remove or alter any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot or property to a compliant condition and, upon failure of the Owner, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to a compliant condition and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(vi) Without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Property;

(vii) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(b) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as an Individual Purpose Assessment. The Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(c) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(d) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action.

Section 12.2 Covenants to Run. The covenants and restrictions contained in this Declaration shall run with and bind the Property in perpetuity. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the owners of all of the lands within the Property.

Section 12.3 Termination. Termination of the Property shall be in accordance with the Act.

Section 12.4 Attorney Fees. If an Owner fails to pay any Assessment or any other amount due to the Association as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs, without the necessity of commencing a legal proceeding. If an Owner, an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Property, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against the Owner, shall be charged as an Individual Purpose Assessment and shall constitute a lien against the Lot.

Section 12.5 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration and except for amendments that may be approved by the Declarant or the Association under the provisions of this Declaration or the Act, any provision, covenant, condition,

restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least sixty-seven percent (67%) of the votes in the Association. Said approval may be obtained in any method allowed by the Governing Documents of the Association or the Act or other applicable law. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Eagle County, Colorado, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association. All challenges to the validity of any amendment or repeal must be made within one (1) year after the date of recording of such amendment or repeal.

Section 12.6 Amendment of Declaration by Declarant. The Declarant may amend this Declaration or the Plat to correct clerical, typographical or technical errors. The Declarant may also amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal national Mortgage Association.

Section 12.7 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving rights to or for the benefit of the Declarant, or its assigns, shall not be effective unless the Declarant has given written consent to such amendment or repeal, which may be withheld at the Declarant's sole discretion, and which consent, if granted, may be evidenced by the execution by the Declarant of any certificate of amendment or repeal. The foregoing requirement for consent to any such amendment or repeal shall terminate upon the conveyance of all of the Lots That May Be Included to Owners other than the Declarant.

Section 12.8 Cooperation with Other Associations or Districts. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other Property owners and/or any special district(s) to share facilities, to share the costs and/or responsibility for any operation, maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other Property association(s) and/or any district(s), or to otherwise cooperate with any other Property association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other Property association(s) and/or any district(s) as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other Property association(s) and/or any district(s) to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall

provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 12.9 Registration of Mailing Address. Each Owner shall register his mailing address with the Association. Except as may otherwise be required by this Declaration, any notices or demands intended to be served upon an Owner shall be sent by first class mail, postage prepaid, addressed in the name of such Owner at such registered mailing address, or provided by other means as permitted or required by the Act. If an Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot.

Section 12.10 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 12.11 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 12.12 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 12.13 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 12.14 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 12.15 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____
day of _____, 2024.

DECLARANT:

MIDTOWN LOFTS LLC,
a Colorado limited liability company

By: _____
Name: Dan Armistead
Title: Owner/Manager

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2024, by _____ as
_____ of MIDTOWN LOFTS LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A: DESCRIPTION OF PROPERTY

[NEED TO INCLUDE LEGAL DESCRIPTIONS OF THE LOTS TO BE INCLUDED, AND
THE DESIGNATION OF THE LOT TYPE OF EACH]

