

fees, fines and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Board of Directors' acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments becomes due.

10.3 Lien Superior to Homestead and Other Exemptions. An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against the Assessment Lien.

10.4 Priority of Lien. An Assessment Lien is prior to all other liens and encumbrances on a Lot/Unit except as follows:

- (a) Liens and encumbrances recorded before the recordation of this Declaration;
- (b) A security interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to Section 10.7 below) which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article 10 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;
- (c) Liens for Project taxes and other governmental assessments or charges against the Lot.

This Article 10 does not prohibit an action or suit to recover sums for which this Article 10 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot/Unit shall not affect the lien for an Assessment.

10.5 Perfection of Lien. The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot as a Reimbursement Assessment.

10.6 Regular Assessments.

- (a) A Regular Assessment shall be made annually against each Lot, based upon an annual Budget prepared by the Board of Directors, for purposes of paying (i) the annual costs of operating and administering the Association and all other Common Expenses, (ii) the costs of services rendered or expenditures incurred by the Association to or for less than all Lots (but not including Common Expenses), which shall be assessed only to the Lots benefitted and then equally among them, (iii) reasonable reserves for contingencies, replacements, and other proper purposes, and (iv) such other matters as may be reasonably determined by the Board of Directors to be the subject of a Regular Assessment;
- (b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Lot in the Community, except that (i) any Common Expense or portion thereof benefitting fewer than all of the Lots shall be assessed exclusively against the Lots benefitted; and (ii) any Common Expense associated with the maintenance, repair, improvement or replacement of a exterior improvements on Lots shall be assessed only against the Lot(s) for which those improvements are located. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense liabilities.
- (c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot is conveyed by Declarant to a Person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Board of Directors may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Board of Directors, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Owner acquiring a Lot/ between installment due dates shall pay a pro rata share of the immediately preceding installment.
- (d) The Board of Directors shall fix the amount of the Regular Assessment, using the Budget procedure described below, thirty (30) days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Board of Directors timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Board of Directors levies the Regular Assessment and provides notice thereof.

- (e) The Board of Directors shall also mail to each Owner at least ten (10) days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi-annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to subparagraph (d) above. Failure of the Board of Directors to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Board of Directors in fact provides such notice.

10.7 Association Budget. The Board of Directors shall adopt a Budget which establishes a Regular Assessment for the Owners. Annually, the Board of Directors shall prepare or cause to be prepared an operating budget (the "Budget") for the next calendar year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. Within thirty (30) days after adoption of any proposed Budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting sixty-seven percent (67%) of all Owners reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board of Directors.

10.8 Special Assessments. In addition to the Regular Assessments and Reimbursement Assessments authorized in this Article 10, the Board of Directors may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance, or replacement of capital improvements (including related fixtures and personal property) to or upon or serving the Community, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association. Except in the event of an emergency, or an excess tort liability, where no membership vote shall be required, the Board of Directors shall not levy a Special Assessment without the approval of the Owners in the Community as provided below.

Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Owners no less than thirty (30) or more than fifty (50) days before the meeting. At the meeting, the presence of Owners in person or by proxy that are entitled to cast fifty percent (50%) of the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirements, and the required quorum at this second meeting shall be only thirty percent (30%) of the votes in the Association. No such second meeting shall be held more than sixty (60) days following the date of the first meeting.

Provided a quorum of Owners entitled to vote is present in person or by proxy, in accordance with the quorum requirements set forth in the preceding paragraph, then the

affirmative vote of a majority of the Owners so present shall constitute approval of the proposed Special Assessment.

For purposes of this Section I 0.8, the term "emergency" shall mean any circumstances or set of circumstances which pose an imminent threat of loss, damage or injury, actual or threatened, to persons or property. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot/Unit in the Community, and shall be due and payable to the Association on the due date fixed by the Board of Directors in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than thirty (30) days after the giving of such notice.

10.9 Reimbursement Assessments. In addition to the Regular and Special Assessments authorized hereunder, the Board of Directors may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles and Bylaws, or any Rules and Regulations, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Board of Directors for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, the Articles, Bylaws, or the Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Board of Directors in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

10.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Board of Directors from time to time, which shall not be less than twelve percent (12%) nor more than twenty-one percent (21%) per year, and the Board of Directors may also assess a late charge (and/or a bad check charge) thereon. The Board of Directors may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Board of Directors may, but shall not be required to, record a Notice of Delinquent Assessment or charge against any Lot as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Board of Directors, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Lot.

The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Lot at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against the Owner's Lot in the discretion of the

Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any Common Elements or by abandonment of the Lot against which the Assessments are made.

In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Regular Assessments.

10.11 Statement of Unpaid Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot, whether delinquent or not. The statement shall be furnished within fourteen (14) days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request.

10.12 Assessments for Tort Liability. In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

## **ARTICLE 11** Eminent Domain

11.1 Definition of Taking. The term "taking", as used in this Article 11, shall mean condemnation by eminent domain or sale under threat of condemnation.

11.2 Representation in Condemnation Proceedings of Common Elements. In the event of a threatened taking of all or any portion of the Common Elements, the Owners hereby appoint the Association through such Persons as the Board of Directors may designate to represent the Association and all of the Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Association shall constitute sufficient notice to all Owners, and service of process on each individual Owner shall not be necessary.

11.3 Award for Common Elements. Any awards received by the Association on account of the taking of Common Elements shall be paid to the Association. The Association may, in its sole

discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners as their interests may appear. The rights of an Owner and the mortgagee of a Lot as to any such distribution shall be governed by the provisions of the mortgage encumbering the Lot/Unit.

11.4 Taking of Lots/Units. If a Lot is acquired by eminent domain leaving the Lot Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Lot Owner for the acquired Lot and/or Unit and its Allocated Interests. Upon acquisition, unless the decree otherwise provides, that Lot's Allocated Interests are automatically reallocated to the remaining Lots (as appropriate) in proportion to the respective Allocated Interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken is thereafter a Common Element. Otherwise, if part of a Lot is acquired by eminent domain, the award must compensate the Lot Owner for the reduction in value of the Lot. Upon acquisition, unless the decree otherwise provides:

- (a) That Lot's Allocated Interests are reduced in proportion to the reduction in the size of the Lot; and
- (b) The portion of Allocated Interests divested from the partially acquired Lot is automatically reallocated to that Unit and to the remaining Lots (as appropriate) in proportion to the respective interests of those Lots before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interests.

11.5 Miscellaneous. The court decree shall be recorded in Garfield County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

## **ARTICLE 12**

### Acknowledgements, Construction Defects, Disputes, Dispute Resolution and Litigation

#### 12.1 Acknowledgements.

- (a) *Security.* THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROJECT, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION IS NOT AN INSURER AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE

CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION MAKES NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

- (b) *No View Easement.* There is no easement or other right, express or implied, for the benefit of the Lot or any Owner for light, view or air created by this Declaration or as a result of the Owner owning the Lot.
- (c) *Sound Transmission.* Sound and impact noise transmission in a building(s) such as the Project is hard to control, and noises from adjoining or nearby structures and surrounding development and/or mechanical equipment can and will be heard in the Units. The Association is not responsible in any way for sound or impact noise transmission.
- (d) *Mold Disclosure.* Molds, mildew, fungi, bacteria and microbiologic organisms (collectively “Molds”) are present in soil, air and elsewhere in the environment. Molds can proliferate in various environments including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Molds. Due to various reasons, including the varying sensitivities of different individuals to various types of Molds and other contaminants, as of the date of this Declaration there currently exist no state or federal standards regarding acceptable levels of exposure to Molds. EACH OWNER ACKNOWLEDGES THAT DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PAST, CURRENT OR FUTURE PRESENCE OR ABSENCE OF MOLDS IN OR IN THE VICINITY OF ITS LOT/UNIT, ANY COMMON ELEMENT WALL(S) LOCATED WITHIN ITS LOT, OR ANY LIMITED COMMON ELEMENT ALLOCATED TO ITS LOT/UNIT OR IN ANY OTHER PORTION OF THE COMMUNITY. The provisions of this paragraph will be binding upon the Owners to the fullest extent permitted by applicable law, as may be in effect from time to time.
- (e) *Inspection by Others, Waiver of Post Inspection Liability.* It is hereby expressly understood and agreed by Declarant and by any Owner acquiring a Lot/Unit that Declarant relies upon governmental inspectors and other qualified subcontractors and tradesman to inspect the construction of the Unit and the Common Elements in order to verify compliance with construction plans and with any and all building code requirements applicable to residential construction. Declarant and each Owner further expressly understand and agree that, with respect to the Units and the Common Elements and the Limited Common Elements, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible government agency, Declarant will be deemed to have used its best efforts to construct such Units and Common Elements in substantial compliance with the construction plans and all applicable building code requirements. EXCEPT AS OTHERWISE MAY BE PROVIDED IN A PURCHASE AND SALE OR OTHER AGREEMENT BETWEEN DECLARANT AND AN OWNER, EACH OWNER, BY ACQUIRING AN

OWNERSHIP INTEREST, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST DECLARANT AND ITS AFFILIATES ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION, AND ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE LOTS/UNITS OR THE COMMON ELEMENTS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR COMMON ELEMENTS; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT. TO THE EXTENT THAT ANY SUBSTANTIAL OR MATERIAL NONCOMPLIANCE WITH APPLICABLE BUILDING CODES OR WITH THE CONSTRUCTION PLANS IS DISCOVERED WITH REGARD TO ANY UNIT OR THE COMMON ELEMENTS, THE PROVISIONS OF THIS ARTICLE 12 WILL GOVERN SUCH MATTER. THE PROVISIONS OF THIS SECTION 12.1(e) WILL BE BINDING UPON THE OWNERS AND THE ASSOCIATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

12.2 Testing for Construction Defects.

- (a) The Association will not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing or invasive testing of any kind for defects in construction of any Unit, Lot or Common Element without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board of Directors will rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Association will not be obligated to authorize or undertake such testing.
- (b) In determining whether to authorize such testing, the Board of Directors will be governed by the following considerations:
  - a. Whether the Association's position is strong enough to justify taking any other or further action;
  - b. Whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; and
  - c. Whether it is in the Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria to pursue the matter further.
- (c) Notwithstanding the foregoing, under no circumstance with the Association authorize such testing as is contemplated under Section 12.2(a) unless the nature of the suspected defect is such that:

- a. It poses a significant risk to life, health, safety or personal property; and
  - b. It threatens or affects the structural integrity, functionality or performance of the Property (or a portion thereof) for its intended use.
- (d) In the event that the Board of Directors undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant and others responsible for the construction will be entitled to notice of the alleged defect, access to the area of the alleged defect and an opportunity to inspect the area and repair any defect that is found to exist. Declarant and others responsible for construction will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.
- (e) In the event that testing discloses any defects, Declarant and others responsible for construction will be given a reasonable amount of time, based on the nature and extent of the defect, to repair or correct the condition. If Declarant or others responsible for construction fail to repair or correct the condition, the Board of Directors will have the right, but not the obligation, to proceed with a “Claim” pursuant to this Article. In determining whether to proceed with such a Claim, the Board will be governed by the same standards as set forth in Section 12.7 below.

12.3 Consensus for Condominium Association Litigation. Except as provided in this Section 12.3, the Association will not commence a judicial or administrative proceeding, including, without limitation, any proceeding required under Section 12.6 below, without (a) the approval of the Owners to which as least 67% of the votes in the Association are allocated; and (b) the affirmative vote of Declarant so long as Declarant owns any Lot. This Section 12.3 will not apply, however, to: (i) actions brought by the Association to enforce the terms of this Declaration, the Bylaws, the Rules, the Design Guidelines or the Construction Guidelines (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges on ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it. This Section 12.3 will not be amended unless such amendment is approved by at least 67% of the votes in the Association and pursuant to the same procedures, necessary to institute proceedings, as provided for herein.

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

12.4 Alternative Method for Resolving Disputes. The Association, its officers, directors, and committee members; any Owner; all persons subject to this Declaration; and any person not otherwise subject to this Declaration who agrees to submit to this Section 12.4 (each such entity being referred to as a “Bound Party”) agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 12.5 of this Declaration (each, a “Claim”), to the procedures set forth in Section 12.6 of this Declaration.

12.5 Claims. Unless specifically exempted below, all Claims arising out of or related to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration or relating to the design or construction of the Units, the Common Elements or the Lots (including, without limitation any soils related issues) will be subject to the provisions of Section 12.6 of this Declaration.

Notwithstanding the above, unless all parties thereto otherwise agree, the following will not be Claims and will not be subject to the provisions of Section 12.6 of this Declaration:

- (a) Any suit by the Association against any Bound Party to enforce the provisions of Article 10 (Assessments);
- (b) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 3 (General Provisions and Restrictions Applicable to the Community); and
- (c) Any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.6.

#### 12.6 Mandatory Procedures.

- (a) *Notice*. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (Claimant and Respondent are hereinafter referred to individually, as a "Party", or collectively as the "Parties") will notify each Respondent in writing (the "Notice"), stating plainly and concisely (i) the nature of the Claim including the persons involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e. the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.
- (b) *Negotiation and Mediation*.
  - a. 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, the Board of Directors may appoint a representative to assist the Parties in negotiation.
  - b. If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties)("Termination of Negotiations"), Claimant will have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Parties, or if the Parties cannot agree then as designated jointly by each of the Parties' desired mediation service, and providing dispute resolution services in the Garfield County, Colorado area.