

**SUBASSOCIATION CONDOMINIUM DECLARATION FOR
THE BOARDWALK AT PELICAN BAY CONDOMINIUMS**
(a Common Interest Community)

THIS DECLARATION is made and entered into this ____ day of _____, 2004, by PELICAN BAY MANSIONS, LLC, a Colorado Limited Liability Company, hereinafter referred to as the “**Declarant.**”

RECITALS

A. The Declarant is the owner of that certain real property located in the County of Weld, State of Colorado, legally described on Exhibit "A" attached hereto and incorporated herein by reference (“**Real Estate**”).

B. The Declarant desires to create a Condominium Common Interest Community on the Real Estate, pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time (“**Act**”), in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be for common ownership solely by the Owners of the separate ownership interests.

C. The Declarant has caused to be incorporated under the laws of the State of Colorado THE BOARDWALK AT PELICAN BAY CONDOMINIUM ASSOCIATION, a nonprofit corporation for the purpose of exercising the functions herein set forth.

D. The Real Estate also has been or will be annexed to the Water Valley Large Planned Community in the City of Windsor in Weld County, Colorado, and the Real Estate and all Buildings and Units under this Declaration will also become part of the Water Valley Master Association, Inc., a Colorado nonprofit corporation, (hereinafter referred to as the “**Master Association**”) under the Master Declaration of Covenants, Conditions and Restrictions for Water Valley by Trollco, Inc. recorded on November 3, 1995 at Reception No. 2462325 of the Weld County records, and any subsequent amendments thereto, hereafter collectively referred to as the “**Master Declaration.**”

E. As part of the Water Valley Large Planned Community, the Association will receive, and must pay, a monthly billing for raw irrigation water used within the Common Interest Community and provided through the Master Association. The cost of such raw irrigation water will therefore become a Common Expense for which all Owners within the Common Interest Community will be liable. While billed monthly, the Association may pay the raw irrigation water fee annually until further notice by the Master Association. Such raw irrigation water fee is subject to change in the sole and absolute discretion of the Master Association.

F. The Real Estate also has been or will be subject to that certain special district known as the Poudre Tech Metropolitan District, hereafter referred to as the “**Metro District.**”

The Metro District is a governmental entity and political subdivision of the State of Colorado and body corporate with all powers of public or quasi-municipal corporations which are specifically granted or implied for carrying out the objectives and purposes of the Metro District. The Metro District has the power to adopt and enforce rules and regulations which govern the Real Estate, and the power to impose ad valorem property taxes, fees, rates, tolls, penalties or charges against the Real Estate.

ARTICLE 1. SUBMISSION OF REAL ESTATE

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, the Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

ARTICLE 2. DEFINITIONS

Section 2.1 Definitions. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Act or in the Plat and Map of the Real Estate shall have the meanings provided in the following sections of this Article:

2.1.1 “Allocated Interests” shall mean and refer to the undivided interest in the Common Elements, Common Expense Liability, and votes in the Association.

2.1.2 “Approval” or “Consent” shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

2.1.3 “Association” shall mean and refer to THE BOARDWALK AT PELICAN BAY CONDOMINIUM ASSOCIATION, a Colorado nonprofit corporation, its successors and assigns.

2.1.4 “Buildings” shall mean and refer to the buildings containing Condominium Units as shown on the Plat and Map.

2.1.5 “Bylaws” shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

2.1.6 “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, and shall include, but not be limited to, all structural elements of the Buildings, foundations, party walls, bearing walls, roofs, and exterior cladding, including roofing, siding, flashing, windows, vents, and exterior doors.

2.1.7 “Common Expense Liability” shall mean and refer to the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

2.1.8 “Common Expenses” shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. Common Expenses may include, but are not limited to, amounts payable by the Association to the Master Association pursuant to the Master Declaration, which expenses include, but are not limited to, those payable for maintenance services provided by the Master Association and raw irrigation water provided through the Master Association.

2.1.9 “Common Interest Community” shall mean and refer to the Real Estate and all improvements constructed thereon.

2.1.10 “Condominium” shall bear the same meaning as defined in C.R.S. §38-33.3-103(9).

2.1.11 “Declarant” shall mean PELICAN BAY MANSIONS, LLC, a Colorado Limited Liability Company, its successors and assigns.

2.1.12 “Declaration” shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats and maps of the Real Estate recorded in the Clerk and Recorder's office of Weld County, Colorado.

2.1.13 “Dispose” or “Disposition” shall mean and refer to a voluntary transfer of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a Security Interest.

2.1.14 “Documents” shall mean and refer to this Declaration, the Plat and Map as recorded and filed, the Articles of Incorporation, the Bylaws, and the Rules and Regulations as they may be amended from time to time, together with any exhibit, schedule or certificate accompanying such Documents.

2.1.15 “Executive Board” shall mean and refer to the Executive Board of the Association as defined in the Bylaws.

2.1.16 “Identifying Number” shall mean and refer to a symbol or address that identifies only one (1) Unit in the Common Interest Community.

2.1.17 “Insurer” shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and who has provided written notice of such interest to the Association. An Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a First Security Interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Insurer be given the notices and other rights described in this Declaration.

2.1.18 “Limited Common Elements” shall mean and refer to a portion of the Common Elements allocated by this Declaration or by the operation of C.R.S. §38-33.3-202(1)(b) or (1)(d) of the Act for the exclusive use of one (1) or more Units but fewer than all of the Units.

2.1.19 “Member” shall mean and refer to each Owner of a Unit in the Common Interest Community. Membership shall be appurtenant to, and may not be separated from, ownership of a Unit.

2.1.20 “Mortgagee” shall mean and refer to any Person who has a Security Interest in a Unit and who has provided written notice of such interest to the Association. The notice must include the Unit number and address of the Unit on which it has a Security Interest. Such notice shall be deemed to include a request that the Mortgagee be given the notices and other rights described in this Declaration.

2.1.21 “Person” shall mean and refer to a natural person, a corporation, a partnership, an association, a trust, or any other entity or combination thereof.

2.1.22 “Plat and Map” shall mean and refer to the Plat and Map of the Real Estate and all supplements and amendments thereto recorded in the office of the Clerk and Recorder of Weld County, Colorado.

2.1.23 “Purchaser” shall mean and refer to a Person, other than the Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Unit, other than:

- (a) A leasehold interest in a Unit of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or
- (b) A Security Interest.

2.1.24 “Real Estate” shall mean and refer to the real property described on Exhibit "A" attached hereto and incorporated herein by reference, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with a conveyance of land, though not described in the contract of sale or instrument of conveyance.

2.1.25 “Rules and Regulations” shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

2.1.26 “Security Interest” shall mean and refer to an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other

consensual lien or title retention contract intended as security for an obligation. "First Security Interest" shall mean and refer to a Security Interest in a Unit prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Weld County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

2.1.27 "Unit" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration and Plat and Map.

2.1.28 "Unit Owner" or "Owner" shall mean and refer to the Declarant or other Person who owns a Unit but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created in the Declaration until that Unit is first conveyed to another Person.

Section 2.2 Other Terms Defined in Act. Unless the context clearly indicates otherwise, other terms defined in the Act shall have the meanings attributable to such terms in the Act.

Section 2.3 Other Terms in Declaration. Other terms in this Declaration may be defined in specific provisions contained herein and shall have the meaning assigned by such definition.

ARTICLE 3. COMMON INTEREST COMMUNITY

Section 3.1 Name. The name of the Common Interest Community is THE BOARDWALK AT PELICAN BAY CONDOMINIUMS.

Section 3.2 Association. The name of the Association is THE BOARDWALK AT PELICAN BAY CONDOMINIUM ASSOCIATION.

Section 3.3 Condominium. The Common Interest Community is a Condominium. The Common Interest Community is a part of Water Valley, a Large Planned Community.

Section 3.4 County. The name of every county in which any part of the Common Interest Community is situated is Weld County, Colorado.

Section 3.5 Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth on Exhibit "A" attached hereto and incorporated herein by reference.

Section 3.6 Maximum Number of Units. The maximum number of Units the Declarant reserves the right to create within the Common Interest Community is forty-eight (48).

Section 3.7 Boundaries of Units. The boundaries of each Unit are located as shown on the Plat and Map and are more particularly described as follows:

3.7.1 Any interior portion of the structural walls or demising walls between the two Units shall constitute a portion of the applicable Unit, (For example, drywall or other treatment attached to the interior demising or structural walls shall constitute a portion of the Unit. Exterior portions of the structural walls are not considered a portion of the Unit);

3.7.2 Anything above the structural portion of the floor (for example above concrete slab or joists) shall constitute a portion of the Unit;

3.7.3 That portion of the ceiling which is interior to the ceiling beams or trusses (including conduit wires below the trusses) shall constitute a portion of the applicable Unit;

3.7.4 Any fixtures within a Unit, including delivery systems and apparatus for utilities, heating, hot water, plumbing, air conditioning exclusively serving a Unit, whether or not located within the boundaries of the Unit, shall constitute a portion of the Unit. (For example, HVAC systems which serve only one Unit, shall constitute a portion of the Unit and the repair and replacement thereof shall be the responsibility of the applicable Owner and shall not be considered a Common Expense).

Section 3.8 Allocated Interests. The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association shall be allocated among the Owners as follows:

3.8.1 For each Unit, the Owner's share of the undivided interest in the Common Elements and Common Expenses shall be equal to a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Units within the Common Interest Community.

3.8.2 Each Owner of a Unit shall be entitled to one (1) vote for each Unit owned. The Owners' voting rights in the Master Association shall be as specified in the Master Declaration.

3.8.3 The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association for each Unit are set forth on Exhibit "B" attached hereto and incorporated herein by reference.

Section 3.9 Recording Data. All easements and licenses to which the Common Interest Community is presently subject are described on the Plat and Map and/or Exhibit "C" attached hereto and incorporated herein by reference. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.

Section 3.10 Notice. Notice of matters affecting the Common Interest Community may be given to Owners by the Association or by other Owners in the following manner: notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Unit or to

any other mailing address designated in writing by the Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States Mail.

**ARTICLE 4. DESCRIPTION, CONVEYANCE, OWNERSHIP
AND TAXATION OF CONDOMINIUM UNITS**

Section 4.1 Division of Property into Units. The Declarant intends, but is not obligated, to divide the Real Estate, including the improvements thereon, into twenty-four (24) fee simple estate Units containing six (6) Units in each of two (2) Buildings and three (3) Units in each of four (4) Buildings to be constructed upon the Real Estate. Each Unit shall consist of a separately delineated Unit in accordance with Article 3, Section 3.7 hereof, and an undivided interest in and to the Common Elements appurtenant to such Unit. The undivided interest in the Common Elements appurtenant to each Unit for the initial three (3) Units to be located within the first Building constructed upon the Real Estate are set forth on Exhibit "B" attached hereto and incorporated herein by reference. Thereafter, five (5) additional Buildings, each containing the additional Units specified above, shall be erected and constructed upon the Real Estate by the Declarant and the Declarant expressly reserves the right to create such additional Units and Common Elements, and to subdivide the additional Units and to convert Common Elements into Units, all as more fully provided in Article 7 hereinafter. The creation of "Time Share Estates" as said term is defined in the Colorado Condominium Ownership Act (i.e., C.R.S. §38-33-101, et seq., as amended) is hereby expressly prohibited.

Section 4.2 Common Elements. Subject to the right of the Association to adopt reasonable, non-discriminatory and uniform rules and regulations regarding usage, all of the Owners of Units in this Common Interest Community shall have a non-exclusive right in common with all of the other Owners of Units to use the Common Elements within the Common Interest Community, including, but not limited to, sidewalks, open spaces and parking areas located within the Common Interest Community. In addition to rights of use described in this Declaration, the Association, its Executive Board, and its managers shall have an unrestricted irrevocable easement to traverse, cross and utilize any portion of the Common Elements which may be necessary in order to maintain, repair or replace general Common Elements and/or Limited Common Elements. Except as specifically herein required, no reference thereto need be made in any instrument of conveyance or other instrument in accordance with Section 4.4 of this Article 4.

Section 4.3 Identification of Units. The Identifying Number of each Unit shall be shown on the Plat and Map.

Section 4.4 Description of Unit.

4.4.1 Every contract for the sale of a Unit written prior to the recordation of the Plat and Map and this Declaration may legally describe the Unit by its identifying Building and Unit designation, followed by the words "THE BOARDWALK AT PELICAN BAY CONDOMINIUMS." The location of such Buildings and Units shall be depicted on the Plat and Map subsequently recorded in the County of Weld, State of Colorado. Such description shall be conclusively presumed to relate to the thereon described Units.

4.4.2 After the Plat and Map and this Declaration have been recorded in the Office of the Clerk and Recorder of Weld County, Colorado, every contract, deed, lease, Security Interest, trust deed, will or other instrument may legally describe a Unit as follows:

Condominium Unit ____, Building ____, THE BOARDWALK AT PELICAN BAY CONDOMINIUMS, in accordance with the Plat and Map of THE BOARDWALK AT PELICAN BAY CONDOMINIUMS recorded on _____, 2004, at Reception No. _____ and subject to the SUBASSOCIATION CONDOMINIUM DECLARATION FOR THE BOARDWALK AT PELICAN BAY CONDOMINIUMS recorded on _____, 2004, at Reception No. _____ of the Weld County, Colorado records.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit, but also the undivided interest in the Common Elements appurtenant to said Unit and all other appurtenant properties and property rights, and incorporate all of the rights and burdens incident to ownership of a Unit and all of the limitations thereon as described in this Declaration and the Plat and Map. Each such description shall be construed to include a non-exclusive easement for use of all of the Limited Common Elements appurtenant to said Unit as well as all the general Common Elements. The means of description specified in this Section 4.4.2 is not the exclusive means of legally describing a Unit, and is not mandatory.

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

Section 4.5 Condominium Plat and Map. Subject to the limitations contained herein, the Plat and Map may be filed for record in whole or in parts or sections, from time to time, as the stages of construction of the Buildings and other improvements are substantially completed or as already constructed Buildings are added to the Plat and Map. Each section of the Plat and Map filed subsequent to the first or initially filed section shall be a supplement and a numerical sequence of such supplements shall be shown thereon. The Plat and Map, or any part of a section thereof depicting Units, shall not be filed for record until an independent licensed or registered engineer, surveyor or architect shall have certified that all structural components of all Buildings containing or comprising any Units thereby created are substantially completed in accordance with the provisions of the Act.

Section 4.6 Inseparability. Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every transfer, conveyance, lease, devise, encumbrance or other disposition of a Unit shall be deemed to be a transfer, conveyance, lease, devise, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

Section 4.7 Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district and any other taxing or assessing authority, in accordance with the Act. For purposes of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in the Common Elements appurtenant to the Unit in question. The Association shall furnish to the Tax Assessor of the County of Weld, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

Section 4.8 Form of Ownership - Title. A Unit may be held and owned in any real property tenancy relationship recognized under the laws of the State of Colorado. The right of any Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal in the Declarant.

Section 4.9 Non-Partitionability and Transfer of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain undivided and not subject to partition, such that any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. By acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this section may be pled as a bar to the maintenance of such an action. Any violation of this section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys fees, costs, expenses and all damages which the Association incurs in connection therewith.

ARTICLE 5. ASSOCIATION

Section 5.1 Authority and Power. The business and affairs of the Common Interest Community shall be managed by the Association. The administration of the Common Interest Community shall be governed by this Declaration, the Act, the Articles of Incorporation, the Bylaws and published Rules and Regulations of the Association. The Association shall have all of the powers, authority and duties permitted pursuant to the Documents and the Act which are necessary and proper to manage the business and affairs of the Common Interest Community.

Section 5.2 Declarant Control. The Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Association for a period of seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of C.R.S. §38-33.3-303(5) of the Act.

Section 5.3 Executive Board Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration or the Bylaws. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act,

the powers and duties necessary for the administration of the affairs of the Association, which shall include, but not be limited to, the following:

5.3.1 Adopt and amend Bylaws.

5.3.2 Adopt and amend Rules and Regulations.

5.3.3 Adopt and amend budgets for revenues, expenditures and reserves.

5.3.4 Collect assessments from Owners.

5.3.5 Hire and discharge managing agents.

5.3.6 Hire and discharge independent contractors, employees and agents, other than managing agents.

5.3.7 Institute, defend or intervene in litigation or administration proceedings or seek injunctive relief for violation of the Documents in the Association's name, on behalf of the Association, or two (2) or more Unit Owners on any matters affecting the Common Interest Community.

5.3.8 Make contracts and incur liabilities.

5.3.9 Regulate the use, maintenance, repair, replacement and modification of the Common Elements.

5.3.10 Cause additional improvements to be made as a part of the Common Elements.

5.3.11 Acquire, hold, encumber and convey in the Association's name, any right, title or interest to real estate or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and applicable law.

5.3.12 Grant easements for any period of time, including permanent easements, leases, licenses and concessions through or over the Common Elements.

5.3.13 Impose and receive a fee or charge for the use, rental or operations of the Common Elements and for services provided to Owners.

5.3.14 Impose a reasonable charge for late payment of assessments and levy a fine for violation of this Declaration, the Bylaws and the Rules and Regulations of the Association.

5.3.15 Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid assessments.

5.3.16 Provide for the indemnification of the Association's officers and the Executive Board and maintain Directors' and officers' liability insurance.

5.3.17 Assign the Association's right to future income, including the right to receive Common Expense assessments, only upon the affirmative vote of the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, at a meeting called for that purpose.

5.3.18 Exercise any other powers conferred by the Documents.

5.3.19 Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Association.

5.3.20 Exercise any other power necessary and proper for the governance and operation of the Association.

5.3.21 By resolution, establish permanent and standing committees of Directors to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Owner within forty-five (45) days of publication of a notice. If an appeal is made, the committee's action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 5.4 Professional Management and Contract Termination Provisions. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause, and without payment of a termination fee, upon fourteen (14) days' prior written notice. Any management contracts, employment contracts or leases of recreational or parking areas or facilities entered into by the Association while there is Declarant control of the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of Declarant control of the Association, upon sixty (60) days' prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto without cause and without payment of a termination fee upon sixty (60) days' prior written notice. In addition, any management agreements entered into by the Association with a manager or managing agent prior to the termination of the period of Declarant control shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one (1) or more First Security Interests.

Section 5.5 Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine their qualifications, powers and duties or

the terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term pursuant to the Bylaws.

ARTICLE 6. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 6.1 Special Declarant Rights. Declarant hereby reserves the right for a period of seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado, to perform the acts and exercise the rights hereinafter specified ("Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

6.1.1 Completion of Improvements. The right to complete or make improvements indicated on the Plat and Map, whether or not it shall yet have been recorded.

6.1.2 Exercise of Development Rights. The right to exercise any Development Rights reserved in Article 7 of this Declaration.

6.1.3 Sales Management and Marketing. The right to use the Common Elements, to the exclusion of the Owners, as sales and management offices. The right to maintain other sales offices, management offices, and signs advertising the Common Interest Community.

6.1.4 Construction Easement. The right to use the Common Elements for the purpose of making improvements and to provide access within the Common Interest Community or within the Real Estate. The right to construct and complete the construction of Units, utilities, entrance signage, landscaping, Buildings, streets, roads, driveways, parking lots, drainage and all other improvements on the Real Estate and to repair and maintain the Common Elements.

6.1.5 Merger. The right to merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership.

6.1.6 Control of Association Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member.

Section 6.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 6.1 above, Declarant also reserves the following additional rights ("Additional Reserved Rights"):

6.2.1 Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, and parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of and to serve the Owners within the Common Interest Community.

6.2.2 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or

regulation of Common Elements, which may or may not be a part of the Common Interest Community for the benefit of the Owners and/or the Association.

6.2.3 Colorado Common Interest Ownership Act. The right to amend this Declaration to comply with the requirements of the Colorado Common Interest Ownership Act in the event any provision contained herein does not so comply with the Act.

6.2.4 FHA/VA Requirements. The right to amend this Declaration in connection with the exercise of any Special Declarant Rights, Additional Reserved Rights or Development Rights or in connection with the qualification or continued qualification for FHA or VA loan guarantees, and for compliance with FNMA, GNMA, FHLMC requirements or other available financing programs.

6.2.5 Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 6.3 Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Weld County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 7. RESERVATION OF DEVELOPMENT RIGHTS

Section 7.1 Development Rights. The Declarant expressly reserves the right to create additional Units and Common Elements, to subdivide the Units and to convert Common Elements into Units on all or any portion of the Real Estate if such property is reserved for future development on the Plat and Map. The maximum number of Units the Declarant reserves the right to create within the Common Interest Community is forty-eight (48). Any such additional Units to be added to the Common Interest Community shall be constructed of materials equal to or of greater quality than the original three (3) Units, and will be compatible architecturally and otherwise with the initial three (3) Units. The Declarant may exercise his Development Rights on all or any portion of the Real Estate in whatever order of development the Declarant, in its sole discretion, determines.

Section 7.2 Amendment of Declaration. As the Declarant creates additional Units and converts Common Elements into Units on all or any portion of the Real Estate, the Declarant shall record an amendment to the Declaration reallocating the Allocated Interests so that the Allocated Interest appurtenant to each Unit will be apportioned according to the total number of Units submitted to the Declaration. The Allocated Interest appurtenant to each Unit thereafter in the Common Interest Community shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Units within the Common Interest Community.

Section 7.3 Supplement to Plat and Map. The Declarant shall, contemporaneously with an amendment to this Declaration reallocating the Allocated Interests in the Common Interest Community, file a supplement to the Plat and Map. Each supplemental Plat and Map

filed subsequent to the first Plat and Map shall be termed a supplement and a numerical sequence of such supplements shall be shown thereon. The Plat and Map or any part of a section thereof depicting Units shall not be filed for record until the Building in which the Units are located has been substantially completed in order to allow a certificate of completion executed by an independent licensed or registered engineer, surveyor or architect stating that all structural components of all Buildings containing or comprising any Units thereby created are substantially completed. Each supplement to the Plat and Map shall be filed for record prior to the conveyance of a Unit to a Purchaser which is included within such supplement.

Section 7.4 Interpretation. Recording of amendments to the Declaration in the office of the Clerk and Recorder of Weld County, Colorado, shall automatically (i) vest in each existing Owner the reallocated Allocated Interest appurtenant to his Unit and (ii) vest in each existing Mortgagee a perfected Security Interest in the reallocated Allocated Interest appurtenant to the encumbered Unit. Upon the recording of an amendment to the Declaration, the definitions in this Declaration shall automatically be extended to encompass and to refer to the additional Units included within the Common Interest Community. The additional Units shall be added to and become a part of the Common Interest Community for all purposes. All conveyances of Units after such action shall be effective to transfer rights in all Common Elements as modified, whether or not reference is made to any amendment to the Declaration. Reference to this Declaration in any instrument shall be deemed to include all amendments to the Declaration without specific reference thereto.

Section 7.5 Maximum Number of Units. The maximum number of Units in the Common Interest Community shall not exceed forty-eight (48) in total.

Section 7.6 Construction Easement. The Declarant expressly reserves the right to perform construction work, store materials on the Common Elements, and the future right to control such work and the right of access thereto until its completion. All work may be performed by the Declarant without the Consent or Approval of any Owner or Mortgagee. The Declarant shall have such easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations and exercising the Declarant reserved rights in this Declaration. Such easements shall include the right to construct underground utility lines, pipes, wires, ducts, conduits, television cable systems, and other facilities across the Common Elements for the purpose of furnishing utility and other services to newly created Units. The Declarant's reserved construction easement includes the right to grant easements to public and quasi-public utility companies and to convey improvements within those easements. If the Declarant grants any such easements, the Plat and Map will be amended, if necessary, to include reference to the recorded easement.

Section 7.7 Termination of Development Rights. The Development Rights reserved to the Declarant, for itself, its successors and assigns, shall expire seven (7) years from the date of the recording of this Declaration, unless the Development Rights are (i) extended as allowed by law, or (ii) reinstated or extended by the Association, subject to whatever conditions and limitations the Executive Board may impose upon the subsequent exercise of the Development Rights by the Declarant.

Section 7.8 Transfer of Development Rights. Any Development Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Weld County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 8. COVENANT FOR ASSESSMENTS

Section 8.1 Creation of Lien and Personal Obligation for Assessments. Each Owner, including the Declarant, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments and other charges, fines, fees, interest, late charges and other amounts, all as provided in this Declaration; with such Assessments and other amounts to be established and collected as hereinafter provided. The annual and special assessments and other charges, fees and fines, together with interest, late charges, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without setoff or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Unit. Each assessment, charge, fee and all other amounts under this Declaration, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the person or persons who was the Owner of such Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Unit for assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said lien. The Master Association likewise has the power to levy assessments against Units and Owners thereof as provided in the Master Declaration. Expenses charged to the Association by the Master Association shall include, but are not limited to, expenses for maintenance services provided by the Master Association and for raw irrigation water provided through the Master Association. In addition, the Metro District has the power to impose ad valorem property taxes, fees, rates, tolls, penalties or charges against the Real Estate.

Section 8.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Units, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such assessments levied during the period of Declarant control may not be used for the purpose of constructing capital improvements, but may be used to repair or reconstruct completed common improvements in the event of damage or destruction.

Section 8.3 Initial Annual Assessment. Until the effective date of an Association budget ratified by the Owners with a different amount for the annual assessment, as provided below, the amount of the annual assessment against each Unit shall be computed at a rate not in excess of One Hundred Fifty and no/100s Dollars (\$150.00) per Unit per month. The maximum assessment referenced in this Section 8.3 does not include any assessments imposed by the Master Association, nor the taxes and assessments imposed by the Metro District, which shall be in addition thereto.

Section 8.4 Rate of Assessment. Annual and special assessments shall be fixed according to the Allocated Interests in an amount sufficient to meet the expected needs of the Association and to carry out the Association's maintenance responsibilities. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, including, but not limited to, private roads, curbs, gutters, sidewalks, drainage facilities, landscaping, and Common Elements, and for the payment of insurance deductibles. All assessments shall be assessed against all the Units in accordance with the Allocated Interests set forth in this Declaration, except as specifically elsewhere provided in this Declaration. If the Common Expense Liability is reallocated, annual assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated share of Common Expenses. The annual and special assessments referenced in this Section 8.4 do not include any assessments imposed by the Master Association, nor the taxes and assessments imposed by the Metro District, which shall be in addition thereto.

Section 8.5 Date of Commencement of Annual Assessments. Until the Association makes an annual assessment, which shall commence at such time as the Executive Board may determine in its discretion, the Declarant shall pay all Common Expenses. After any annual assessment has been made by the Association, annual assessments shall initially not be greater than the amount set forth in Section 8.3 of this Article, and thereafter shall be based on a budget adopted by the Association as provided below. A budget shall be so adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Executive Board may determine in its discretion from time to time; provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due. The annual assessments referenced in this Section 8.5 do not include any assessments imposed by the Master Association, nor the taxes and assessments imposed by the Metro District, which shall be in addition thereto.

Section 8.6 Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures and reserves for the Association's next fiscal year as proposed by the Executive Board. A summary of the proposed budget approved by the Executive Board shall be mailed to the Owners within thirty (30) days after its adoption along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the summary to the

Owners (or, in the alternative, together with a ballot and information sufficient to satisfy the provisions of Section 109 of the Colorado Revised Nonprofit Corporation Act). Unless eighty percent (80%) of the total votes in the Association reject the proposed budget, the budget is ratified. There are no quorum requirements for this meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners continues until such time as the Owners ratify a subsequent budget proposed by the Executive Board as provided above.

Section 8.7 Special Assessments. In addition to the annual assessments authorized in this Article, the Executive Board may levy, in any fiscal year, with the approval of the votes of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for this purpose, 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 or replacement of a capital improvement upon the Common Elements or any property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed improvement, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Unit in accordance with the Allocated Interests therefor. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 8.8 of this Article 8. Notwithstanding the foregoing, special assessments levied during the period of Declarant control may not be used for the purpose of constructing capital improvements, but may be used to repair or reconstruct completed common improvements in the event of damage or destruction. The special assessments referenced in this Section 8.7 do not include any assessments imposed by the Master Association, nor the taxes and assessments imposed by the Metro District, which shall be in addition thereto.

Section 8.8 Notice and Quorum for Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Section 8.7 of this Article shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.9 Charges for Services to Less than All Units. The Association may, at any time from time to time, provide services to less than all of the Units, and the Owners of such Units shall pay the Association for such services as hereinafter provided, which amounts shall be in addition to the annual and special assessments. Any such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Units for which such service(s) are to be provided, with such agreement to include a statement of the costs, fees and expenses reasonably expected to initially be incurred by the Association in providing such service(s), including overhead expenses of the Association. Services which may be provided by the Association pursuant to this section include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of improvements or property owned by such Owner(s); (b) the provision of any

services or functions to or for such Unit(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owner(s); (d) the payment of taxes or other amounts for Owner(s) with funds provided by such Owner(s); and (e) the procurement of insurance for Owner(s). The Association may, at its election, at any time from time to time, collect the aforesaid costs, fees, expenses and other charges from Owners to whom such services are provided, in advance or arrears, in monthly or other installments, or in addition to and on the same date for payment of, the assessments.

Section 8.10 Television Cable System. The Association may, at any time and from time to time, contract with a television cable system provider (the “**Cable Company**”) to achieve a favorable bulk rate for basic television cable system services (“**Cable Services**”). In such event, the Cable Company shall bill the Association for the monthly service fee, plus applicable franchise fees, governmental access fees, and sales taxes (collectively the “**Monthly Service Charge**”), which Monthly Service Charge shall be a Common Expense of all Owners, regardless of whether individual Owners desire or utilize the Cable Services. Each Owner shall be billed directly by the Cable Company for all applicable activation and installation charges. The Association shall have no responsibility for any fees for additional services or equipment incurred by individual Owners. The Association may, at its election, at any time from time to time, collect the aforesaid Monthly Service Charge from Owners in advance or arrears, in monthly or other installments, or in addition to and on the same date for payment of the assessments. The Monthly Service Charge constitutes an assessment item hereunder, and the Association shall have all collection and lien rights specified herein.

Section 8.11 Lien for Assessments.

8.11.1 The Association has a statutory lien on a Unit for any assessment levied against that Unit or for fines imposed against its Owner. Fees, charges, late charges, attorneys' fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

8.11.2 Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Executive Board or managing agent of the Association may prepare, and record with the Clerk and Recorder of Weld County, Colorado, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

8.11.3 A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of each unpaid assessment becomes due.

8.11.4 Unless the Declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same Property, those liens have equal priority.

Section 8.12 Priority of Association Lien.

8.12.1 A lien under this Article 8 is prior to all other liens and encumbrances on a Unit except:

(a) Liens and encumbrances recorded before the recordation of the Declaration;

(b) A First Security Interest on the Unit, which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

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

8.12.2 A lien under this section is also prior to the First Security Interests described in the preceding subsection 8.11.1(b) to the extent of an amount equal to the annual assessment based on a periodic budget adopted by the Association as provided above which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

8.12.3 This section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of Part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of C.R.S. §15-11-201, as amended.

Section 8.13 Receiver. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments.

Section 8.14 Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to an Eligible Mortgagee or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner or Eligible Mortgagee or their designee, delivered personally or by certified mail, first class postage

prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 8.15 Effect of Non-Payment of Assessments; Remedies of Association. Any assessment not paid within ten (10) days after the due date thereof may bear interest at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Executive Board, and the Executive Board may in addition assess thereon a late charge not in excess of Twenty-Five Dollars (\$25.00) per month. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Unit. If a judgment or decree is obtained, including, without limitation, in a foreclosure action, such judgment or decree shall include a reasonable attorneys' fee to be fixed by the court, together with the costs of the action, and may include interest and late charges as above provided. No Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure. The Master Association and the Metro District have similar enforcement rights.

Section 8.16 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves and need not be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future assessments.

Section 8.17 Working Capital Fund. The Association or the Declarant shall require the first Owner of any Unit who purchases that Unit from the Declarant to make a non-refundable contribution to the Association in an amount equal to two (2) times the monthly installment of the annual assessment at the time of closing (regardless of whether or not assessments have commenced as provided in Section 8.5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by the Declarant of each Unit and shall, until use, 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 additional equipment, property or services; provided, however, that the working capital fund shall not be used to defray any of the assessments, or any of the reserve contributions, which are payable by the Declarant to the Association, or to pay for construction costs, or to make up any budget deficits, during the period of Declarant control. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Unit, an Owner shall be entitled to a credit for his transferee (but not from the Association) for the aforesaid contribution to working capital fund.

Section 8.18 Assessments for Misconduct. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that Common Expense exclusively against such Owner and his Unit.

ARTICLE 9. LIMITED COMMON ELEMENTS

Section 9.1 Limited Common Elements. "Limited Common Elements" means a portion of the Common Elements designated in this Declaration or on the Plat and Map or by the Act for the exclusive use of one (1) or more, but fewer than all, of the Units. In addition to those portions of the Common Elements described in C.R.S. §38-33.3-202(1)(b) and (1)(d) of the Act, the following are designated as Limited Common Elements: (a) garages (which shall be assigned to Units on the Plat and Map), (b) exterior windows and doors, (c) balconies, (d) patios, and (e) all Limited Common Elements which are noted on the Plat and Map which is incorporated herein by this reference.

Section 9.2 Allocation of Reserved Limited Common Elements. Portions of the Common Elements may be designated on the Plat and Map as "Common Elements which may be allocated as Limited Common Elements." The Declarant reserves the right to allocate specified areas which constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which the specified areas shall become appurtenant. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of C.R.S. §38-33.3-208 of the Act by making such an allocation in a recorded instrument or in the deed to the Unit to which such Limited Common Element area shall be appurtenant or by recording an appropriate amendment or supplement to this Declaration. Such allocation by the Declarant may be to Units owned by the Declarant. The right of allocation pursuant to this Section shall pass from the Declarant to the Executive Board, and the Declarant may not thereafter exercise any such right of allocation subsequent to the date which is seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of C.R.S. §38-33.3-303(5) of the Act.

Section 9.3 Allocation of Specified Common Elements. The Executive Board may designate part of the Common Elements from time to time for use by less than all of the Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portion of the Common Elements.

Section 9.4 Expense Allocation. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit(s) to which the Limited Common Element is assigned.

ARTICLE 10. EASEMENTS

Section 10.1 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Real Estate, and all portions thereof, shall be subject to the easements as shown on any recorded Plat and Map of the Real Estate, or any portion thereof, and as shown on the recorded Plat and Map. Further, the Real Estate, or portions thereof, is now or may hereafter be subject to the easements, licenses and other recorded

documents, or any of them, set forth on Exhibit “C” attached hereto and incorporated herein by this reference.

Section 10.2 Encroachments. In the event that any portion of the Common Elements encroaches upon any Unit or in the event that any portion of a Unit encroaches upon any other Unit or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (i) settling of a Building; (ii) alteration or repair to the Common Elements and any improvements thereon; or (iii) repair or restoration of one (1) or more Buildings and/or Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. Without limiting the generality of the foregoing, there shall be an easement upon any other Unit or upon any portion of the Common Elements for the placement and maintenance of air conditioning units, utility meters and related items. In the event that any one (1) or more of the Units, Buildings or other improvements comprising part of the Common Elements, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other Security Interests relating to Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Plat and Map.

Section 10.3 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon the Common Elements in the proper performance of their duties.

Section 10.4 Access and Utility Easements. There is hereby created a blanket easement upon, across, over and under the Common Elements for ingress and egress to and from each Unit and for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity and master television antenna or cable systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair and maintain water and sewer pipes, water and sewage pumps, gas, electric, telephone and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Association shall have the right and authority to grant such easements upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof. The easement provided for in this Section 10.4 shall in no way affect, avoid, extinguish or modify any other recorded easements on the Common Elements.

Section 10.5 Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements, maintenance and storage facilities for use by the Association.

Section 10.6 Drainage Easement. An easement is hereby granted to the Master Association and the Association, their officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Common Elements for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Real Estate so as to improve the drainage of water on the Real Estate. Every Unit and the Common Elements shall be burdened with easements for natural drainage of storm water runoff from the other portions of the Real Estate; provided, no person shall alter the natural drainage on any Unit so as to materially increase the drainage of water onto adjacent portions of the Real Estate without the consent of the Owner of the affected property.

Section 10.7 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within individual Units or may be conveniently accessible only through individual Units. The Owners of other individual Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each individual Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements located therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Elements or to any individual Unit. The Association shall also have such right, independent of any agency relationship. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repairs within any individual Unit at the instance of the Association or any Owner, shall be an expense of all the Owners. Non-emergency repairs shall be made only during regular business hours on business days after forty-eight (48) hours' notice to the occupants of the individual Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations, the occupants of the affected individual Unit shall be warned of impending entry as early as is reasonably possible.

Section 10.8 Metro District's Right of Entry. The Metro District's Manager, employees of the Metro District, or other personnel authorized by the Metro District's Manager, bearing proper credentials and identification, shall be permitted by all residents or landowners within the Metro District, including the Real Estate, to enter upon all properties or appurtenances for the purpose of installation, replacement, repair, maintenance, inspection, or observation reasonably necessary in connection with the services and facilities provided by the Metro District. The granting of right of entry by the resident or landowner is a condition precedent and a condition subsequent to the provision of services by the Metro District. Refusal to permit such access to Metro District personnel in the performance of their duties may result in discontinuance of services to the property in question, or cause additional charges to the resident or landowner for increased costs or damages sustained as a result of refusing the right of entry.

Section 10.9 Easements Deemed Created. All conveyances of Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 10, even though no specific reference to such easements or to this Article 10 appears in the instrument for such conveyance.

ARTICLE 11. RESTRICTIVE COVENANTS AND OBLIGATIONS

Section 11.1 Residential Use. Subject to the Special Declarant Rights as provided in this Declaration, Units shall be used for residential purposes only, including uses related to the convenience and enjoyment of such residential use.

Section 11.2 Temporary Structures. No temporary building or other temporary structures, trailers, basements, tents, shacks, barns, or outbuildings shall be erected, used or permitted to be kept or stored on any portion of the Real Estate for any period of time, except as specifically allowed in this Declaration or except as utilized by the Declarant or the assigns or lessees of Declarant.

Section 11.3 Construction Facilities. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its agents, employees, and contractors to maintain during the period of construction and sale of any Units, upon such portion of the Real Estate as Declarant may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale or rental of Units, including, without limitation, a business office, storage area, construction yard, signs, model Units, sales office, construction office, parking areas, and lighting.

Section 11.4 General Restrictions. None of the Real Estate shall be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof and no billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Real Estate. Garage doors shall remain closed except when being used to enter or leave the Unit or for short periods of time when the Owner is doing work which requires the door to be open.

Section 11.5 Household Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded within the Common Interest Community provided, however, that a reasonable number of dogs, cats or other household pets may be kept in any Unit, so long as they are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to other Owners. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion whether dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of this Section 11.5, and to take such action or actions as it deems reasonably necessary to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s), as well as any costs incurred by the Association as a result of such pets. Pets shall not be kept or tethered

outdoors. Dogs and other household pets shall not be allowed to run at large within the Common Interest Community. Pet Owners shall be responsible for cleaning up their pet's waste.

Section 11.6 Use of Common Elements. Subject to the Special Declarant Rights as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written Approval of the Executive Board of the Association. Except for those improvements erected or installed by Declarant in its construction and completion of the Common Interest Community, nothing shall be altered on, constructed in or removed from the Common Elements without the prior written Approval of the Executive Board of the Association.

Section 11.7 Exterior Changes. Except for those improvements erected or installed by Declarant in its construction and completion of the Common Interest Community, no exterior additions to, alterations or decoration of any Building, including, but not limited to, any structural alterations to any Unit or Common Element, nor any changes in fences, hedges, walls or other structures, nor installation of window-mounted air conditioning units or any exterior television, radio or other communication antennas of any type, shall be commenced, erected, placed or maintained, without the prior written Approval of the Executive Board of the Association and the design review committee of the Master Association.

Section 11.8 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, by example and not limitation, satellite dishes, shall be erected, used, or maintained outdoors or on any Unit, whether attached to a Building or structure or otherwise, unless approved by the Executive Board of the Association.

11.8.1 In the consideration and approval process of the Executive Board concerning antennas, the Executive Board shall be guided by the Federal Communication Commission ("FCC") rules on satellite dishes and antennas. There shall be no covenant, rule, or similar restriction on property owned or within the exclusive use or control of the antenna user that impairs the installation, maintenance, or use of (1) an antenna designed to receive DBS that is one meter or less in diameter, (2) an antenna designed to receive video programming services via multi-point distribution services, including MMDS that is one meter or less in diameter or diagonal measurement, or (3) an antenna designed to receive television broadcast signals TVBS, is prohibited subject to either of the following two exceptions: (a) the restriction is necessary to accomplish a clearly defined safety objective that is readily available to antenna users and would be applied to the appurtenances, devices or fixtures that are comparable in size, weight, and appearance and the restriction is no more burdensome to affected antenna users than is necessary to achieve the above objectives, or (b) the restriction is necessary to preserve an historic district listed or eligible for listing in the National Register of Historic Places and imposes no greater restrictions on antennas than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight and appearance and is no more burdensome to affected antenna users than is necessary to achieve the objectives described above.

11.8.2 A regulation or restriction impairs installation, maintenance, or use of an antenna if it:

- (a) unreasonably delays or prevents installation, maintenance or use; or
- (b) unreasonably increases the cost of installation, maintenance, or use; or
- (c) precludes (prevents or makes impossible) reception of an acceptable quality signal.

11.8.3 No legal action of any kind shall be taken to enforce any restriction or regulation prohibited by FCC rule, except as follows:

(a) Associations may apply to the FCC for a waiver of the rule. The association must show a local concern of a highly specialized or unusual nature to justify a waiver.

(b) Associations or antenna users may petition the FCC or a local court (e.g. county or district court) to determine if a particular restriction is permissible or prohibited under this rule. The burden of proof to show that the restriction complies with the rule and does not impair installation, maintenance or use is on the association.

(c) If an association has requested a determination from a court or the FCC on whether the restriction at issue is permitted as an exception for safety or historic preservation, the restriction may be enforced until a ruling is issued that the restriction is not preempted by the FCC rule. The FCC rule is adopted by this Declaration as the same may be amended from time to time.

Section 11.9 Signs and Advertising. Except as hereinafter provided, no signs, advertising, billboards, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on any Unit, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written Approval of the Executive Board of the Association and the design review committee of the Master Association. Notwithstanding the foregoing, reasonable signs, advertising or billboards used by the Declarant in connection with its sale or rental of Units, or otherwise in connection with its development of the Common Interest Community, shall be permissible, provided that such use by the Declarant shall not interfere with the Owners' use and enjoyment of the Common Elements, their Units, or their ingress and egress from a public way to the Common Elements or their Units.

Section 11.10 Storage and Trash. All clotheslines, garbage cans, trash receptacles or similar stored items shall be kept in the garage assigned to a Unit so as to conceal them from view of neighboring Units and streets. All rubbish, trash or garbage shall be kept in a container, shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

Section 11.11 Parking. Subject to the Special Declarant Rights as provided in this Declaration, there shall be no parking, storing, servicing, or repairing commercial vehicles, recreational vehicles, mobile homes, boats, campers, trailers, watercraft, or other oversized

vehicles, stored vehicles or inoperable vehicles in places other than enclosed attached garages. The Executive Board may promulgate reasonable rules and regulations regarding parking restrictions applicable to any portion of the Real Estate, including driveways and adjoining public streets. Each Owner shall be responsible for any damage or staining to concrete created by oil or other substances dripping from vehicles.

Section 11.12 Abandoned or Inoperable Vehicles. No abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Common Interest Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of one (1) week or longer, or any vehicle which does not have an operable propulsion system installed therein; provided, however, that the foregoing restrictions shall not include otherwise permitted vehicles parked by Owners while on vacation or during a period of illness, or vehicle(s) parked within an enclosed garage. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

Section 11.13 Sound, Light, etc. There shall be no activities which materially disturb or destroy the vegetation, wildlife or air quality within the Common Interest Community or which use excessive amounts of water or which result in unreasonable levels of sound, water, or light pollution. Exterior illumination of Units, yards, garages, driveways and streets shall be limited to that reasonably necessary for security and safety. Lighting shall be oriented so as not to shine on any other Unit.

Section 11.14 Solar Collectors: Solar power generation is prohibited.

Section 11.15 Evaporative Coolers: No evaporative cooler may be installed in or on any Unit.

Section 11.16 Subdivision. There shall be no subdivision of a Unit into two or more Units after a subdivision plat including such Unit has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Unit, except that the Declarant shall be permitted to subdivide or change boundary lines of Units which it owns.

Section 11.17 Leases. A Unit Owner may lease his Unit in compliance with all of the provisions of the articles of incorporation, bylaws, rules and regulations, and Declaration (the "Governing Documents") of the Association and the Master Association. Any Unit Owner who leases his Unit shall be required to provide copies of the Governing Documents to all tenants of the Unit. Leases of Units must be in writing and for a term of not less than six (6) months. Leases shall be subject in all respects to the provisions of the Governing Documents and must specifically provide that any failure by any related user to comply with the terms of such

documents shall be a default under the lease. Failure of a Unit Owner to comply with the terms of this Section and with applicable rules and regulations may, at the discretion of the Executive Board, result in that person's forfeiture of the right to lease the Unit.

Section 11.18 Nuisances. No nuisance shall be allowed within the Common Interest Community, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Common Interest Community by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the development and construction of the Common Interest Community. All parts of the Common Interest Community shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Common Interest Community or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Common Interest Community, or any portion thereof, shall be observed.

Section 11.19 No Hazardous Activities. Nothing shall be done or kept or which endangers the common welfare or which is deemed a hazardous material under any law, ordinance or rule of any jurisdiction or regulatory body in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of insurance on any Building and/or Unit, or any part thereof, or an increase on the rate of insurance on any Building and/or Unit, or any part thereof, over what the Association, but for such activity, would pay, without the prior written Approval of the Association. In the event the Association, in its sole and absolute discretion, elects to consent to any such activity resulting in an increase of the rate of insurance on any other Units, the Association may require that the responsible Unit owner agree in writing to the prompt payment of such increase in the insurance premium.

Section 11.20 No Violation of Laws. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would be in violation of any protective covenants, restrictions or limitations affecting any Unit or in violation of any statute, rule, ordinance, regulation, zoning resolution, permit or otherwise imposed requirement of any governmental authority.

Section 11.21 Home Business Activities. No business or commercial enterprise whatsoever shall be allowed to operate within the Common Interest Community, except that Owners may conduct business activities within their Units provided all of the following conditions are satisfied:

11.21.1 The business conducted is clearly secondary to the residential use of the Unit and is conducted entirely within the Unit;

11.21.2 The existence or operation of the business is not detectable from outside of the Unit by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

11.21.3 The business is conducted exclusively by the Owner or members of the Owner's family;

11.21.4 The business does not result in an undue volume of traffic or parking within the Common Interest Community, which determination shall be made by the Executive Board in its sole discretion;

11.21.5 The business conforms to all zoning requirements and is lawful in nature; and

11.21.6 The business conforms to any reasonable rules and regulations that may be imposed by the Executive Board from time to time on a uniform basis to protect the peace, tranquility and quality of the Common Interest Community.

Section 11.22 Damage to Common Elements. No damage to or waste of the Common Elements, or any part thereof, shall be committed by an Owner or by any guest, invitee or contract Purchaser of an Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from such damage or waste caused by him, or his guests, invitees or contract Purchasers.

Section 11.23 Rules and Regulations. The Association, through the Executive Board, may adopt reasonable Rules and Regulations not inconsistent with this Declaration governing the use of the Common Elements. The Master Association likewise has the power to adopt and enforce rules and regulations as provided in the Master Declaration. The Metro District likewise has the right to promulgate rules and regulations.

Section 11.24 Master Declaration. The Common Interest Community, Units, and Owners are also subject to the restrictive covenants and obligations as provided in the Master Declaration.

Section 11.25 Exemption for Declarant. Provisions of this Declaration regarding development rights, special declarant rights and additional reserved rights shall supersede the provisions in this Article 11. The Declarant and transferee declarants shall be exempt from provisions of this Article 11 which impede or preclude the exercise of any development right, special declarant right, or additional reserved rights reserved to the Declarant and transferee declarants pursuant to this Declaration.

ARTICLE 12. INSURANCE

Section 12.1 Insurance. The Association shall maintain the following types of insurance on the Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. Notwithstanding any of the specific insurance requirements set forth in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements

of any mortgage Insurer with respect to their guaranty, insurance or purchase of Security Interests.

12.1.1 Property insurance for broad form covered causes of loss, including Units as they were originally conveyed by the Declarant to the original purchasers; except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations and other matters normally excluded from property policies. Any changes or upgrades to the original interior surfaces of Units as conveyed by the Declarant to original purchasers must be separately insured by the Owners.

12.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Executive Board, the Association, any managing agent, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Executive Board. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one (1) or more insured parties against other insured parties.

12.1.3 A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Common Interest Community, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months' aggregate assessments on the Units, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Common Interest Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection 12.1.3.

12.1.4 In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate from time to time, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, and coverage on fixtures, equipment and other personal property inside Units.

Section 12.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, and

the Association or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard noncontributory Security Interest holder's clause in favor of each Security Interest holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 12.3 Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment.

12.3.1 To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

12.3.2 Any loss to any Unit or to any Common Elements which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Executive Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

Section 12.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 12.1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Security Interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, the Owners and Eligible Mortgagees as their interests may appear. Subject to the provisions of Section 12.1 of this Article, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, the Owners and the Eligible Mortgagees are not entitled to receive

payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated.

Section 12.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 12.6 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or Mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 12.7 Insurance to be Maintained by Owners. Any insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each individual Unit, shall be the responsibility of the Owner of such Unit.

Section 12.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance.

Section 12.9 Notice of Cancellation. If the insurance described in Section 12.1 of this Article is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE 13. DAMAGE OR DESTRUCTION

Section 13.1 Damage or Destruction.

13.1.1 Any portion of the Common Interest Community which is covered by a policy of insurance carried by the Association and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Common Interest Community is terminated;
- (b) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or
- (c) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild.

13.1.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community, and except to the extent that other persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to the holders of a Security Interest, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or the holders of a Security Interest, as their interests may appear, in proportion to the Allocated Interests of all the Units. Repair or replacement shall mean the restoration of improvement(s) to substantially the same condition in which they existed prior to the damage in conformance with the original architectural plan and scheme. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interest is automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

Section 13.2 Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a special assessment in the aggregate amount of such insufficiency pursuant to Section 8.7 hereof.

ARTICLE 14. MAINTENANCE, REPAIR AND RECONSTRUCTION OF COMMON ELEMENTS

Section 14.1 Maintenance of the Common Elements.

14.1.1 The maintenance, repair, reconstruction and operation of the Common Elements shall be the responsibility and expense of the Association and a Common Expense of all of the Owners. The Association shall conduct reasonable safety inspections of the Common Elements, and shall conduct immediate follow-up maintenance to correct unsafe conditions. The Association shall receive and process complaints of its members regarding safety issues. The Association shall

not need the prior Approval of its Members to cause such maintenance, repairs, reconstruction and operation to be accomplished. While assessed differently as elsewhere provided in this Declaration, the Association shall maintain and keep in repair both the general Common Elements and the Limited Common Elements.

14.1.2 Maintenance, repair, or replacement of any drainage structure or facilities, public streets, or other public improvements required by the local governmental entity as a condition of development of the Common Interest Community or any part thereof shall be the responsibility of the Association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

14.1.3 Without limiting the generality of Section 14.1.1 above, the removal of snow from the Common Elements and the Limited Common Elements, including, but not limited to, sidewalks, parking lots, and driveways, shall be the responsibility and expense of the Association and a Common Expense of all of the Owners. Notwithstanding anything to the contrary in this Declaration, all Units shall be assessed equally for snow removal.

14.1.4 Without limiting the generality of Section 14.1.1 above, the irrigation and maintenance of all landscaping within the Common Interest Community shall be the responsibility and expense of the Association and a Common Expense of all of the Owners. Notwithstanding anything to the contrary in this Declaration, all Units shall be assessed equally for irrigation and maintenance of all landscaping within the Common Interest Community.

14.1.5 Without limiting the generality of Section 14.1.1 above, the removal of trash from the Common Interest Community shall be the responsibility and expense of the Association and a Common Expense of all of the Owners. The Association may contract with an independent contractor for such trash removal, and may promulgate reasonable rules and regulations regarding the use of trash receptacles, limitations on the type and quantity of trash which will be removed, and the like.

14.1.6 The Association shall collect as assessments, and expend, funds for the cost of the maintenance, repair and replacement to be performed by the Association under this section, subject to Section 14.4 of this Article.

14.1.7 Notwithstanding anything to the contrary contained in this Declaration, none of the responsibilities of the Association for management, control, maintenance, repair, replacement and improvement of the Common Elements or improvements thereon shall give rise to any interest of the Association in any Unit or the quality of any improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant, any member thereof, or any other person, for negligence, breach of express or implied warranties, or any other matters, with respect to any such improvements or the construction thereof.

Section 14.2 Association's Right to Repair, Maintain, Restore and Demolish. In the event any Owner shall fail to perform his maintenance, repair and replacement obligations in a

manner satisfactory to the Executive Board, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Executive Board, enter upon said Unit subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair and replacement shall be the personal obligation of the Owner of the Unit on which such work is performed, and shall be subject to all of the terms and provisions applicable to "assessments" as provided in Article 8 hereof, including, without limitation, interest, late charges and lien rights.

Section 14.3 Easement for Maintenance Access and Entry. Each Owner shall afford to the Association and the other Owners, and to their agents, access through such Owner's Unit reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or improvements maintained, repaired or replaced by the Association. If damage is inflicted or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Unit, the Owner responsible for the damage or the expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. Further, each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible.

Section 14.4 Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, any other property, a Unit, or any improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or the expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of Article 8 of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing conducted by the Executive Board after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this section may be appealed by said Owner to a court of law.

Section 14.5 Expenses for Property Subject to Development. In addition to the liability that the Declarant as an Owner has under the Act, the Declarant alone is liable for all expenses in connection with real estate subject to Development Rights until expiration of all Development Rights with respect to such real estate. No other Owner and no other portion of the Common Interest Community is subject to a claim for payment of those expenses. Any income or proceeds from real estate subject to Development Rights inures to the Declarant.

Section 14.6 Construction Defects. The Association shall not commence any lawsuit, arbitration or other civil action against the Declarant for construction defects, omissions or errors without first:

14.6.1 Notifying the Declarant in writing of the nature of the claim stating the specific location and description of each claimed defect, omission or error. Failure of the Association to so notify Declarant within thirty (30) days of its first discovery of the claim shall be deemed a waiver of any right to assert said claim, or any other claim for the same defect, error or omission in another location on the property.

14.6.2 Allowing Declarant forty-five (45) days to assess the alleged defect, omission or error, and to commence repairs if necessary, which repairs shall be pursued diligently to conclusion. Prior to commencing repairs, Declarant shall provide to the Executive Board of the Association Declarant's plan of action which shall include the scope, general procedures, inspection procedures, and, if Declarant deems necessary, plans, specifications and shop drawings. In the event Declarant denies liability for the alleged defect, omission or error, or the Executive Board objects to Declarant's remediation plan, the parties shall submit their dispute to binding arbitration as provided below. No claim for a defect, omission or error with respect to a common element or limited common element may be asserted except by the Executive Board. As long as the Declarant acts in accordance with this Section 14.6, Declarant shall be deemed to have acted in good faith.

14.6.3 Obtaining the consent of at least sixty-seven percent (67%) of the Members of the Association. The question put to the Members shall disclose:

- (a) Whether the attorneys are to be engaged on a fixed fee, hourly rate or contingency basis, and what the hourly rate is for all attorneys and support personnel;
- (b) Estimated consultant requirements and fees;
- (c) Estimated total attorneys' fees, consultants fees and other costs of litigation, both as a percentage of any possible award and as a fixed dollar amount;
- (d) The estimated cost of repairs as determined by the signed bids of not less than three licensed contractors from a scope of work prepared by a licensed engineer or architect;
- (e) The estimated dollar amount of the claim to be advanced and what the net amount to the Association would be after payment of legal fees and costs and whether that amount would be sufficient to make the claimed repairs;
- (f) The potential damage and loss to the capital value of the Member's assets (Units) while the Units are tied up in litigation, and, specifically, the fact that the Units may not be marketable while involved in litigation. Said estimate

shall be provided by a certified appraiser approved by 51% of the Mortgagees or Insurers.

Section 14.7 Arbitration. Any dispute between the Association and the Declarant shall be decided by binding arbitration. The arbitration shall be conducted in accordance with the Uniform Arbitration Act, C.R.S. §13-22-200 *et seq.* Judgment on the award of the arbitrator may be entered in any court having jurisdiction thereof. The party desiring arbitration shall serve written notice upon the other party, together with designation of the first party's representative. If the person designated by the first party is acceptable to the second party as an arbitrator, the second party shall so notify the first party within ten (10) days and such representative shall serve as the sole arbitrator. If the person so designated is not acceptable to the second party, then the second party shall designate his or its own representative in a written notice to the first party, then the second party shall designate his or its own representative in a written notice to the first party within the same ten (10) day period. The two representatives so named, if such is the case, shall within ten (10) days thereafter appoint an arbitrator, and the arbitrator shall then proceed forthwith to hear and unilaterally determine the matter. If either party fails, within the time allowed herein, to appoint its representative, the representative named by the other party shall act as the sole arbitrator and unilaterally decide the matter. If the two representatives are unable to agree upon an arbitrator within the ten (10) days allowed herein, either party may at any time apply to the presiding judge of any court of competent jurisdiction in Weld County for the appointment of an arbitrator, and the arbitrator shall proceed forthwith to hear and unilaterally determine the matter. Attorneys fees and costs may be awarded at the discretion of the arbitrator, but are not mandatory. In no instance may punitive, multiple or other special damages be awarded.

Section 14.8 Award. In the event of an award resulting from a lawsuit, arbitration or other civil action claiming defects, errors or omissions, the money derived therefrom must be used to make the repairs for which it was awarded. The work shall be performed by licensed and insured third party contractors under contract with the Association. In no event will funds be disbursed directly to Members for repairs or for any other reason, except for reimbursement for claims which were presented and proven, or stipulated, during the litigation, arbitration or settlement. In the event the award is insufficient to fully fund the repairs, the Executive Board shall determine the shortfall amount and shall either (a) borrow from a commercial lender sufficient funds to complete the work, which debt shall be guaranteed by all the Members individually, if required by the lender, and the repayment of which shall be included in the regular assessments or by Special Assessment, or (b) effect a Special Assessment on the Members to fund the shortfall. Repairs shall be commenced within ninety (90) days of the receipt of any award and pursued diligently to completion.

Section 14.9 Waiver of Tort and Related Damages. The Association and the Members waive any claim or theory of recovery for tort damages against Declarant for defects, errors or omissions that have not caused any physical damage to person or property. Declarant's duty to repair a defect, omission or error as outlined in Article 14, Section 14.6.2 hereof is the exclusive remedy which the Association shall have against Declarant for said defect, omission or error. The Association shall not have, and hereby waives, the right to pursue any other remedies or

damages, including, but not limited to, consequential, punitive or other special damages against Declarant.

ARTICLE 15. MORTGAGEE PROTECTION

Section 15.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control. As used in this Article, and elsewhere in this Declaration, the terms “Eligible Mortgagees” and “Eligible Insurers” shall mean Mortgagees and Insurers who have provided written notice to the Association of their name and address, and have identified the Unit in which they hold a First Security Interest or have insured or guaranteed a First Security Interest.

Section 15.2 Percentage of Eligible Mortgagees. Wherever in this Declaration the Approval or Consent of a specified percentage of Eligible Mortgagees is required, it shall mean the Approval or Consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate equal or exceed the specified percentage of votes as compared to the total number of Units then subject to Security Interests held by Eligible Mortgagees.

Section 15.3 Notices of Actions. The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer, and each Owner hereby Consents to and authorizes such notice, of the following:

15.3.1 Any Condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a First Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

15.3.2 Any delinquency in the payment of assessments or charges owed to the Association by the Owner of a Unit subject to a First Security Interest held, insured or guaranteed, by an Eligible Mortgagee or Eligible Insurer or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association, if and when the Executive Board has actual knowledge of such default, and such delinquency or default remains uncured for a period of sixty (60) days;

15.3.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

15.3.4 Any proposed action which would require the Consent of a specified percentage of Eligible Mortgagees as specified in Section 15.4 below; and

15.3.5 Any judgment rendered against the Association.

Section 15.4 Consent and Notice Required.

15.4.1 Document changes. Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any provision of the Documents by the Association or Owners described in this subsection may be effective without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section 15.3 above, and the vote of at least sixty-seven percent (67%) of the Owners (or any greater Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee Approval required by this Declaration). The foregoing Approval requirements apply to amendments affected by the exercise of any development right which affect or modify:

- (a) Voting rights;
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or priority of assessment liens;
- (c) Reduction in reserves for maintenance, repair and replacement of Common Elements;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interest in the general Common Elements, Limited Common Elements or rights to their use;
- (f) Redefinition of boundaries of Units;
- (g) Convertibility of Units into Common Elements or Common Elements into Units;
- (h) Except for the rights specifically reserved herein by the Declarant for the Declarant's sole discretion, expansion or contraction of Units in the Common Interest Community, or the withdrawal of property from the Common Interest Community;
- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his Unit;
- (l) Modification of any restriction on permitted uses of Units or Common Elements as set forth in this Declaration;

(m) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and

(n) Any provision that expressly benefits Security Interest holders or insurers or guarantors of Security Interests.

15.4.2 Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights, without the notice to all Eligible Mortgagees and Eligible Insurers as required by Section 15.3 above, and Approval of at least fifty-one percent (51%) (or the indicated percentage) of the Eligible Mortgagees:

(a) Convey or encumber the Common Elements or any portion thereof, where an eighty percent (80%) Eligible Mortgagee Approval is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause).

(b) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation, as to which sixty-seven percent (67%) of the votes of Eligible Mortgagees is required;

(c) The granting of any permits, easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility, road or other easements serving or necessary to serve the Common Interest Community, and excluding any leases, licenses or concessions for less than one (1) year);

(d) The merger of the Common Interest Community with any other Common Interest Community;

(e) The assignment of the future income of the Association, including its right to receive Common Expense assessments.

(f) Any action taken not to repair or replace the property.

15.4.3 The failure of an Eligible Mortgagee or Eligible Insurer to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, "return receipt requested" for Approval of an addition or amendment of the Documents wherever Eligible Mortgagee or Eligible Insurer Approval is required, shall constitute an Approval of the addition or amendment.

Section 15.5 Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment or termination.

Section 15.6 Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules and Regulations, books and records and financial statement. The Association shall permit any Owner, Eligible Mortgagee or Eligible Insurer or other first Mortgagee of Units, to inspect the books and records of the Association during normal business hours, and shall provide copies upon payment of a reasonable fee.

Section 15.7 Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer who submits a written request, a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited or shall be reviewed by an independent certified public accountant if an Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the costs of the audit or review.

Section 15.8 HUD or VA Approval. During the period of Declarant control, the following actions shall require the prior approval of HUD or VA, if at any time such action is taken, HUD has insurance or VA has a Guarantee(s) on one (1) or more First Security Interests: annexation of additional real property, amendment of this Declaration, termination of the Common Interest Community, merger or consolidation of the Association.

Section 15.9 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 15.10 Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which an Owner may attend.

ARTICLE 16. GENERAL PROVISIONS

Section 16.1 Eminent Domain. The taking by eminent domain of Unit(s) or Common Element(s), or any portion thereof, shall be done in accordance with applicable law, including, without limitation, the Act.

Section 16.2 Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the court may deem just and proper, an amount equal to the costs and reasonable attorneys' fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.

Notary Public

EXHIBIT "A" ATTACHED TO AND MADE A PART OF SUBASSOCIATION
CONDOMINIUM DECLARATION FOR THE BOARDWALK AT PELICAN BAY
CONDOMINIUMS

Legal Description of Real Estate

PARCEL 1

All of Tracts A, B, C and D of Water Valley Subdivision Twelfth Filing,
Town of Windsor,
County of Weld, State of Colorado.

PARCEL 2

All of Building Envelopes 1, 2, 3, 4, 5 and 6 of Water Valley Subdivision Twelfth Filing,
Town of Windsor,
County of Weld, State of Colorado.

EXHIBIT "B" ATTACHED TO AND MADE A PART OF SUBASSOCIATION
 CONDOMINIUM DECLARATION FOR THE BOARDWALK AT PELICAN BAY
 CONDOMINIUMS

<u>Allocated Interests</u>				
Building No.	<u>Unit No.</u>	Share of <u>Common Elements</u>	Share of <u>Common Expenses</u>	Vote in the affairs of <u>Association</u>
6	1525A	1/3	1/3	1
6	1525B	1/3	1/3	1
6	1525C	1/3	1/3	1
Total		100%	100%	100%

EXHIBIT "C" ATTACHED TO AND MADE A PART OF SUBASSOCIATION
CONDOMINIUM DECLARATION FOR THE BOARDWALK AT PELICAN BAY
CONDOMINIUMS

Easements and Licenses

Easements and licenses appurtenant to the Common Interest Community are as follows:

1. Easements as shown on the plat of subdivision.
2. Reservation of an undivided 25% interest in and to all oil, gas, coal, and other hydrocarbon minerals, together with the rights of ingress and egress to prospect and explore for, and to mine and develop same as contained in instrument from Windsor Resource Corporation, a Colorado corporation, recorded MARCH 26, 1990 in BOOK 1259 as Reception No. 2208869, and any interests therein, assignments, or conveyances thereof.
3. Reservation of an undivided 5% interest in and to any rocks, sand, and gravel, together with the rights of ingress and egress to prospect and explore for, and to mine and develop same as contained in instrument from Windsor Resource Corporation, a Colorado corporation recorded MARCH 26, 1990 in BOOK 1259 as Reception No. 2208869, and any interests therein, assignments, or conveyances thereof.
4. Terms, conditions and provisions of Poudre Tech Center Planned Unit Development Agreement, between Trolco, Inc., a Colorado corporation, and the Town of Windsor, Colorado, a Colorado municipal corporation recorded AUGUST 7, 1991 in BOOK 1307 as RECEPTION NO. 2258961.
5. Right of way for sewer line & lift station purposes as granted to the Town of Windsor, a municipal corporation, by instrument recorded May 14, 1970 in Book 625 as Reception No. 1547171, said right of way being a 30 foot wide permanent utility easement and a temporary 50 foot wide construction easement over and across said Sections 28 and 33, which is more particularly described in said instrument.
6. The effect of subject property being located within the Water Valley Metropolitan District No. 1 and Water Valley Metropolitan District No. 2.
7. Covenants and restrictions recorded November 3, 1995 in Book 1517 as Reception No. 2462325; First Supplement recorded February 25, 1998 as Reception No. 2596103; re-recorded May 11, 1998 as Reception No. 2611935; Second Supplement recorded August 7, 1998 under Reception No. 2631542; Designation of Builder recorded August 10, 1998 under Reception No. 2632099; Designation of Builder recorded November 5, 1998 as Reception No. 2651622, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicap persons.

8. Any lien, whether by statute or otherwise, to secure payment of the assessments provided for under that certain agreement recorded November 3, 1995 in Book 1517 as Reception No. 2462325.
9. Terms, conditions and provisions of DISCLOSURE MEMORANDUM, by TROLLCO, INC. recorded AUGUST 7, 1998 as RECEPTION NO. 2631541.
10. Restrictive Covenant contained in Special Warranty Deed from Eastman Kodak Company, a New Jersey Corporation, and Windsor Resource Corporation, a Colorado Corporation, recorded March 26, 1990 in Book 1259 as Reception No. 2208866, which states as follows: "For a period of 20 years following the date of this Special Warranty Deed, no buildings, structures, or other improvements of any kind shall be constructed, erected, or installed on the Easterly 500 feet of the property which exceed a height of 40 feet. The foregoing restriction shall run with the property and shall be binding upon all parties having any right, title, or interest in the property, or any part thereof, and shall inure to the benefit of the Grantor, its successors and assigns. The Grantee, by accepting the conveyance of the property, agrees that the foregoing restriction shall be binding upon the Grantee, its successors and assigns, and any other party having any right, title, or interest in the property or any part thereof."
11. Terms, conditions and provisions of DISCLOSURE MEMORANDUM, recorded FEBRUARY 25, 1998 as RECEPTION NO. 2596104.
12. Declaration of Restrictive Covenant which does not contain reversionary clauses, recorded March 26, 1990 in Book 1259 as Reception No. 2208868.
13. Terms, conditions and provisions of Special Lease Agreement, between Eastman Kodak Company, a New Jersey corporation, and Windsor Resource Corporation recorded MARCH 26, 1990 in BOOK 1259 as RECEPTION NO. 2208870; Assignment of Lease Rights recorded March 26, 1990 in Book 1259 as Reception No. 2208871.
14. Miscellaneous easements for ditches, irrigation laterals, overhead utilities, telephone facilities, etc. as shown on maps recorded March 21, 1990 in Book 1258 as Reception No. 2208424.
15. Easement for utility line and incidental purposes as granted to Poudre Valley Rural Electric Association, Inc. by instrument recorded August 31, 1994 in Book 1457 as Reception No. 2404817, the exact location of said easement not being specifically defined.
16. Reservation of ALL MINERAL INCLUDING BUT NOT LIMITED TO SAND AND GRAVEL DEPOSITS as contained in instrument from TROLLCO, INC., A

COLORADO CORPORATION recorded JULY 14, 1998 as RECEPTION NO. 2625796, and any interests therein, assignments, or conveyances thereof.

17. Easement over and across the above described Real Estate with right of access, future utilities, ingress and egress, and for the purposes of maintenance and repair as reserved by Trolco Inc., a Colorado Corporation in instrument recorded July 14, 1998 as Reception No. 2625796, said easement not being specifically defined.

18. Notes as shown on plat of Water Valley Subdivision Twelfth Filing.

NOTE: According to note on plat, Tracts A, B, C and D are to be deeded to a Homeowners Association at such time one is established.

19. The effect of the Real Estate being located within the Metro District.

20. All easements and rights of way appearing in this Declaration and on the Plat and Map of the Real Estate.