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Weinland Routt County clerk & Recorder

**DECLARATION OF CONDITIONS, COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR  
CROSSTIMBERS AT STEAMBOAT, A COLORADO  
COMMON INTEREST COMMUNITY**

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**DECLARATION OF CONDITIONS, COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR CROSSTIMBERS AT  
STEAMBOAT, A COLORADO COMMON INTEREST  
COMMUNITY**

THIS DECLARATION, is made this 29th day of October, 1998, by CTSB, LLC, a Texas limited liability company authorized to do business in the State of Colorado ("Declarant"), whose address is 500 West Texas Avenue, Suite 705, Midland, Texas 79701.

**RECITALS**

Declarant is the owner of certain real estate in the City of Steamboat Springs, County of Routt, State of Colorado, described in Exhibit "A" attached hereto (the "Real Estate"). Declarant desires to create a common interest community on the Real Estate, the name of which is CrossTimbers at Steamboat, in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be designed for common ownership solely by the Association, as defined below. Declarant shall cause to be incorporated, no later than the date set forth in Section 38-33.3-301 of the Act, as defined below, under the laws of the State of Colorado, CrossTimbers Townhomes Owners Association, Inc., a nonprofit corporation, for the purpose of exercising the functions as set forth herein (the "Association").

**ARTICLE 1  
SUBMISSION AND DEFINED TERMS**

**1.01 Submission of Real Estate.**

(a) Declarant does hereby submit the Real Estate described on Exhibit "A" to this Declaration to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as such Act may be amended from time to time (the "Act"). CrossTimbers at Steamboat, is a Planned Community under such Act. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

(b) Declarant does further hereby establish a plan for the ownership of real property estates in fee simple consisting of the Units designated on the Plat, and the ownership by the Association (subject to the rights reserved by the Declarant herein) of the Common Elements of CrossTimbers at Steamboat. Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, grants, limitations and obligations shall be deemed to run with the Real Estate, and the same shall be a burden and benefit to Declarant, its successors and assigns, and to any person acquiring or owning any interest in the Real Estate, their grantees, successors, heirs, executors, administrators, devisees or assigns.

**1.02 Definitions.** Each capitalized term in this Declaration not otherwise defined in this Declaration or in the Plat shall have the meanings specified or used in the Act. As used in this Declaration, unless otherwise provided:

(a) **"Allocated Interest"** means the percentage liability for Common Expenses and the votes in the Association allocable to a Unit, as may be set or re-allocated from time to time by this Declaration or any subsequent amendments to this Declaration.

(b) **"Association"** means CrossTimbers Townhomes Owners Association, Inc., a Colorado nonprofit corporation, the members of which shall consist of all of the Owners of Units or, following termination of the Common Interest Community pursuant to the Act, shall consist of all former Unit Owners entitled to distributions of proceeds under C.R.S. §38-33.3-218, or the heirs, personal representatives, successors, or assigns of such former Unit Owners. The Board of Directors of the Association is hereinafter referred to as the "Executive Board."

(c) **"Association Control Period"** means the time period between the initial recording of this Declaration in the real property records of Routt County, Colorado and the last to occur of (1) sixty (60) days after conveyance of 75% of the maximum number of Units that may be created pursuant to Section 3.01 below to Unit Owners other than a Declarant or (2) two years after the last conveyance of a Unit by the Declarant in the ordinary course of business or (3) two years after any right to add new Units was last exercised by the Declarant.

(d) **"Building"** means any building structure containing or including Units and located on the Real Estate and made subject to this Declaration.

(e) **"Common Elements"** means (i) all portions of the Project and the Real Estate, together with all improvements from time to time constructed or located thereon, other than within the boundaries of the Units (provided that certain Common Elements described herein may be located wholly or partially within the boundaries of the Units); (ii) the easements for access to and the maintenance and repair of the Buildings and other improvements on or within Units provided for in this Declaration or the Act, including all access, ingress and egress easements appurtenant to the Real Estate or any part thereof; and (iii) all utility easements, utility lines and appurtenances, including, but not limited to, electricity, gas, telephone, water and sewer, and cable television, which service a separate Unit within the Project, situated within, under or over a Unit or within any common wall in any Building.

(f) **"Common Expenses"** means all expenses expressly declared to be Common Expenses by the Act, this Declaration or the Bylaws of the Association, together with all funds assessed for or allocated to the creation, funding or maintenance of reserves.

(g) **"Declarant"** means CTSB, LLC and its successors and assigns to the Special Declarant Rights created or reserved herein.

(h) **"Declarant Control Period"** means twenty-nine (29) years from and after the initial recording of this Declaration in the real property records of Routt County, Colorado.

(i) **"Declaration"** means this instrument and all amendments to this instrument hereafter recorded in the real property records of Routt County, Colorado, together with the Plat and all amendments and supplements to the Plat.

(j) **"Expansion Property"** means the real property situated in the County of Routt, State of Colorado, described on the Plat of Crosstimbers at Steamboat, Filing No. 1 as the "Expansion Property."

(k) **"First Lienor"** means the person who is the beneficiary of or holds the first lien security interest on a Unit, other than the Association with respect to its lien under the Act as described in Section 8.10 of this Declaration.

(l) **"Limited Common Elements"** means that portion of the Common Elements designated in this Declaration, on the Plat, or by the Act, or in any amendment to any of the foregoing, for the exclusive use of one or more but fewer than all of the Units.

(m) **"Mortgagee"** means any person who owns, or who holds as beneficiary, any security interest, lien or encumbrance on a Unit, including a First Lienor and including any person owning or holding a non-consensual lien encumbering a Unit, such as (but not limited to) a mechanic's lien or judgment lien. If the security interest is a deed of trust, then the "Mortgagee" is the beneficiary thereof and is not the Public Trustee of Routt County or the private trustee identified therein.

(n) **"Owner"** means any person who is the record owner of an undivided fee simple interest in any Unit, including a contract seller but excluding those having such interest merely as security for the performance of any obligation, and where the context clearly requires, "Owner" also means all co-owners of undivided fee simple interests in such Unit.

(o) **"Plat"** means that part of this Declaration and any proper amendment to this Declaration that is a land survey plat as set forth in C.R.S. §38-51-102, depicts all or any portion of the Project in two dimensions, is executed by a person that is authorized by the Act to execute the Declaration or amendment to the Declaration for the Project, and is recorded in the real estate records of Routt County, Colorado and includes any supplemental or amended plat of the Expansion Property or Unspecified Property added to the Project under Article 4 hereof. The Plat for CrossTimbers at Steamboat, Filing No. 1 has been recorded in File 12613 of the Routt County, Colorado real estate records.

(p) **"Phase I"** means the real property described in the Plat for CrossTimbers at Steamboat, Filing No. 1, including the Common Area and the Units described thereon, excluding, however, the Expansion Property.

(q) **"Project"** means the entirety of Common Elements and Units located on and including the Real Estate which are from time to time subject to this Declaration.

(r) **"Real Estate"** means the real property situated in the County of Routt, State of Colorado, described in Exhibit "A" to this Declaration, which is hereby submitted to this Declaration and any real property from time to time made subject to this Declaration under Article 4 hereof, subject to any Special Declarant Rights reserved or created herein.

(s) "Unit" means the separate Units designated on the Plat, including the townhome and other improvements constructed thereon, together with the Allocated Interest in the Common Expenses and votes in the Association allocated to such Unit.

## ARTICLE 2 NAMES; DESCRIPTION OF UNITS

**2.01 Name of Common Interest Community.** The name of the Common Interest Community is CrossTimbers at Steamboat. CrossTimbers at Steamboat is a Planned Community.

**2.02 Name of Association.** The name of the Association is CrossTimbers Townhomes Owners Association, Inc., which is a Colorado nonprofit corporation.

**2.03 Real Estate.** The Common Interest Community is located in Routt County, Colorado. The Real Estate of the Project as of the date of recording of this Declaration is described in Exhibit "A" attached hereto.

## ARTICLE 3 UNITS

**3.01 Number of Units.** The Common Interest Community initially shall include twelve (12) Units in Phase I of the Project, as delineated on the Plat and designated as Units on the Plat. The identifying number of each Unit is shown on the Plat. Declarant intends to add additional Units in the Expansion Property. The maximum number of Units in the Project shall not at any time exceed one hundred twenty (120) Units. Any increase in the number of Units over forty (40) Units shall be subject to approval by the City of Steamboat Springs.

**3.02 Boundaries of Units.** The boundaries of each Unit shall be as shown on the Plat.

**3.03 Allocated Interests.** The percentage Allocated Interest in Common Expenses and the votes in the Association appurtenant to each Unit in Phase I is set forth and scheduled in Exhibit "B" to this Declaration. The formula to establish the Allocated Interest of Common Expenses for each Unit has been fixed such that the amount of the annual and special assessments for each two-bedroom Unit shall be equal to eighty percent (80%) of the amount of the annual and special assessments for each four-bedroom Unit, and the amount of the annual and special assessments for each three-bedroom Unit shall be equal to ninety percent (90%) of the amount of the annual and special assessments for each four-bedroom Unit, and each four-bedroom Unit shall be assessed equally. Exhibit "B" to this Declaration identifies each two-bedroom Unit, each three-bedroom Unit and each four-bedroom Unit in Phase I. If and when additional Units are added to the Project, whether by supplemental declaration or otherwise, the Allocated Interests shall be recalculated in accordance with the preceding formula such that the total Allocated Interests assessed to the Units equals one hundred percent (100%).

**3.04 Subdivision of Units.** No further subdivision of Units shall be allowed.



3.05 **Alteration of Units.** Subject to the provisions of Article 7 hereof, an Owner may alter such Owner's Unit as permitted in the Act.

3.06 **Use of Units.** The Units, regardless of when created, shall be used and occupied solely for residential purposes, including (but not limited to) for nightly and transient rentals and for dwelling and lodging purposes. Owners of Units may rent or lease Units to others; provided, however, that each such lease or rental agreement and the use and occupancy of the leased or rented Unit is subject to the Act, this Declaration and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association.

3.07 **Title.** Title to a Unit may be acquired, held, encumbered and conveyed individually or in any form of concurrent ownership recognized in Colorado.

3.08 **Storage Facilities.** Declarant has constructed, or intends to construct, a limited number of storage units on the Real Estate. The number of such storage units is anticipated to be less than the number of Units. Accordingly, such storage units have been offered by Declarant to the Owners on a first come, first served basis, on a 25-year lease between Declarant, as lessor, and the particular Owner, as lessee. Such leases provide for prepayment of the entire rental amount in advance. Subsequent to Declarant's collection of the rental amounts due under each such lease, Declarant has assigned, or shall assign, all of Declarant's residual interest in such storage units and the related leases to the Association. Such storage units may be used only by an Owner, or the guests or tenants of an Owner; and an Owner may only assign, sublease or otherwise transfer such Owner's right, title and interest in or to any such storage unit to the Association, or to another Owner. The Association shall notify the Owners who have not entered into a lease with respect to any storage unit from time to time as and when additional storage units become available for use or lease through the Association. Subsequent to Declarant's assignment to the Association of the Declarant's residual interest in any storage unit and the lease associated therewith, such storage unit shall be administered by the Association in accordance with the terms of this Declaration.

#### ARTICLE 4 RESERVATION OF DEVELOPMENT RIGHTS

4.01 **Expansion Rights.** Subsequent to completion of Phase I of the Project, which includes, among other things, the initial twelve (12) Units, Declarant anticipates undertaking and completing subsequent phases of the Project which shall include, but may not be limited to, construction of additional Units on the Expansion Property. In addition, pursuant to C.R.S. §38-33.3-222, the Declarant expressly reserves the right to add all or any part of other unspecified real property in Routt County (the "Unspecified Property") to the Project, and to subject all or any part of such Unspecified Property to the provisions of this Declaration, subject to the limitations of said C.R.S. §38-33.3-222 (including the limitation that such Unspecified Property may not exceed 10% of the total area within the Real Estate). If the portion of the Unspecified Property to be added to the Project contains Units, then such portion may be added only after substantial completion of all Buildings containing or comprising any Units on the portion of the Unspecified Property to be added to the Project.

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**4.02 No Consent Required; No Assurances.** The consent of the Association, any existing Owner, any First Lienor, any other Mortgagee of any Unit or property then subject to this Declaration, or any other Person, shall not be required for any exercise by Declarant of any reserved Development Right described in Paragraph 4.01 above. Declarant may exercise any or all of such reserved Development Rights with respect to the Expansion Property or the Unspecified Property at different times and from time to time, without limitation at Declarant's sole option, and in whatever order of development or action Declarant, in Declarant's sole discretion, determines. There are no assurances made by Declarant with respect to boundaries of those portions of such Expansion Property or the Unspecified Property with respect to which reserved Development Rights will or may be exercised, or the order in which those portions may be subjected to the exercise of such Development Rights. If any reserved Development Right is exercised in any such portion, Declarant has no obligation, direct or implied, to exercise that Development Right in all or in any other portion of the remainder of the real property to which such Development Right may be exercised.

**4.03 Amendment of the Declaration.** To exercise any reserved Development Right described in Paragraph 4.01 above, Declarant shall make, execute, acknowledge and record an amendment to the Declaration (including where applicable an amendment to the Plat), containing such provisions as are required by this Declaration or C.R.S. §38-33.3-210, and containing such other provisions not inconsistent therewith as are desired by Declarant, including (but not limited to):

(a) If the Project is expanded, a legal description of the portion of the Unspecified Property added to the Project and subjected to this Declaration, and a description of the Development Rights, if any, reserved by the Declarant therein;

(b) If the Project is expanded, enumeration of the total number of the additional Units created within the Unspecified Property added to the Project; the description of such additional Units shall include an identifying number for each such Unit which is distinguishable from the designation of any other Unit then subject to this Declaration;

(c) If the Project is expanded or if any additional Units or additional Common Elements or Limited Common Elements are created, a description of all Common Elements and Limited Common Elements newly created or on the Unspecified Property added to the Project, together with a designation of the Unit or Units to which each such Limited Common Element is allocated;

(d) The reallocation of the Allocated Interests so that the Allocated Interest appurtenant to each Unit after such amendment will be proportional to all of the Units then subject to the Declaration. The Allocated Interest in the Common Elements and for Common Expense liability appurtenant to each Unit in the Project, after such amendment, shall be the ratio or proportion described in Section 3.03 above.

(e) Such other information and provisions as required or permitted by this Declaration or the Act.

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**4.04 Amendment of the Plat.** Declarant shall, contemporaneously with the Amendment of the Declaration, file an Amendment of the Plat showing the subsequent phases of the Project within the Expansion Property and, if applicable, the Unspecified Property being added to the Project. The Amendment to the Plat shall substantially conform to the requirements contained in this Declaration and in the Act.

**4.05 Interpretation.** Recording of amendments to the Declaration and Plat in the office of the Routt County Clerk and Recorder shall automatically:

(a) Vest in the Owner or Owners of each existing Unit the reallocated Allocated Interests appurtenant to the Unit of such Owner or Owners; and

(b) Vest in each existing Mortgagee a perfected Security Interest or lien in the reallocated Allocated Interests appurtenant to the encumbered Unit, of the same character and priority as such Mortgagee had prior to such amendment.

Upon the recording of an amendment to the Declaration adding additional property to the Project, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Project, as expanded. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements in the Project as expanded, whether or not reference is made to any amendment to the Declaration and Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all amendments to the Declaration and Plat without specific reference thereto.

**4.06 Termination of Development Rights.** The Development Rights reserved to Declarant in this Article IV, for Declarant and the successors and assigns of Declarant, shall lapse and expire at the end of the Declarant Control Period. Upon the lapse and expiration or other termination of the Development Rights, any Unit then subject to Development Rights shall remain a Unit owned by the Owner or Owners thereof and shall not under any circumstances become Common Elements.

**4.07 No Requirement to Submit Unspecified Property.** Nothing in this Declaration or in any other instrument or in the Act shall be deemed or construed to require Declarant or any owner of any part of the Unspecified Property to add any part of such Unspecified Property to the Project or to subject any part of such Unspecified Property to this Declaration, nor shall this Declaration or the Plat be deemed or construed to be an encumbrance, detriment or burden on any part of such Unspecified Property until and unless actually added to the Project and made subject to this Declaration.

## ARTICLE 5

### COMMON ELEMENTS; LIMITED COMMON ELEMENTS; PARTY WALLS

**5.01 Ownership of Common Elements.** All of the Common Elements shall be owned only by the Association, subject to the Special Declarant Rights created or reserved in this Declaration. The Association has the right and power to cause improvements to be made to or upon the Common Elements, as a part of the Common Elements, subject to the Special Declarant Rights. Without limiting the foregoing, as long as the Declarant may exercise any Development Rights in the Expansion Property

or in the Unspecified Property or any subdivision of either, the Association shall not make additional improvements within the Project which adversely affect or impact upon these Development Rights and/or Special Declarant Rights without the Declarant's prior written consent.

**5.02 Use of Common Elements.** Each Owner shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, without hindering, impeding or imposing upon the rights of the other Owners, but subject to this Section and Section 5.04 below, and provided that such use shall be in accordance with rules and regulations duly established from time to time by the Association. Limited Common Elements may be used only by the Owner or Owners to whose Unit(s) such Limited Common Elements are allocated. Notwithstanding the foregoing, the Association may, by Rules and Regulations or action of the Executive Board, limit or restrict access to or the use of Common Elements located on, above or beneath the Building or any Unit in the Project, mechanical areas, utility vaults, drainage facilities and similar items. The Executive Board may, in its discretion, charge reasonable fees and establish reasonable conditions for the use of any recreational facility which is a part of the Common Elements or which is situated on property owned or leased by the Association.

**5.03 Access.** Each Owner of a Unit in the Project is vested with and shall have during his period of ownership, for his own use and the use of his guests, employees, agents and invitees, a non-exclusive easement in common with all other Unit Owners on, over and across (i) all exterior motor vehicle driveways, parking areas and roads, (ii) all pedestrian walkways, trails and sidewalks as are now situated or as may hereafter be constructed by the Declarant or the Association on the Common Elements outside of any Unit or on real property owned by the Association outside of any Unit, and (iii) all other parts of the Common Elements, for purposes of vehicular and pedestrian ingress and egress to such Owner's Unit from adjacent streets and roadways adjoining the Project and for purposes of pedestrian and non-motorized vehicle ingress and egress to such Owner's Unit from public trails adjoining the Project; provided, however, that (i) no Owner shall, by reason of such non-exclusive easement, have any right or privilege to use or occupy any Limited Common Elements which have not been allocated to such Owner's Unit by this Declaration or any amendment hereto, (ii) such easement shall not exist upon or burden or encumber any land within any Unit (except for exterior common walkways or sidewalks which provide access to the Units) and (iii) such easement is subject and subordinate to any Special Declarant Right and to the right and authority of the Association to regulate, encumber and convey the Common Elements pursuant to the Act and to construct, locate and place improvements and structures on Common Elements and on real property owned or leased by the Association; provided, however, that a reasonable route of vehicular and pedestrian ingress and egress from each Unit across the Common Elements to adjacent streets and roadways adjoining the Project shall never be denied. Such easement shall be appurtenant to each Owner's Unit, shall run with such Unit to the respective successive Owners thereof, and shall be irrevocable by Declarant, the Association, or any other Unit Owner.

**5.04 Limited Common Elements and Party Walls.** The Units do not include any Limited Common Elements except as otherwise described in this Section, the Plat or in C.R.S. §38-33.3-202(1)(b) and (d), if any. The following provisions shall apply to the adjoining or common walls located on boundaries of the Units (herein "Party Walls"): (i) that portion of a Party Wall consisting of foundations, stem walls and structural components of the Building shall be owned by the Owners of the adjoining Units, and shall be maintained by the Association pursuant to Article 7; (ii) the lathe, furring, wallboard,

plaster board, plaster, paneling, tiles, wallpaper, paint and other materials constituting a part of the finished surface of a Party Wall and located within the boundary of a Unit is a part of that Unit and any such item located outside the boundary of a Unit but serving one Unit only is a Limited Common Element allocated exclusively to that Unit or if located outside the boundary of, but serving, adjoining Units, is a Limited Common Element allocated equally to such adjoining Units. Each Owner of a Unit on which a Party Wall is located shall have an easement on the contiguous Unit for the Party Wall and for the purpose of structural support, repair and maintenance of the same, including reasonable access through the contiguous Unit for the repair, maintenance, restoration and replacement of the building components constituting the Party Wall and situated on the common boundary of the Units. No Unit Owner shall construct, permit or allow the construction or continuation of any openings in any Party Wall without the consent of the adjacent Unit Owner, excepting only as permitted for repair, maintenance, restoration and replacement of Party Wall improvements.

**5.05 No Reallocation of Common Elements as Limited Common Elements.** Common Elements in the Real Estate not described as Limited Common Elements elsewhere in the Declaration, the Plat or in the Act may not hereafter be allocated as Limited Common Elements.

**5.06 Reallocation of Limited Common Elements Among Units.** Pursuant to the Act, upon approval by the Executive Board, a Limited Common Element may be reallocated between or among Units. In order to reallocate any Limited Common Element between or among Units, the Owners of such Units shall submit to the Executive Board an application for approval of the proposed reallocation which includes matters required by the Act and such other information as may be reasonably requested by the Executive Board. The Executive Board shall approve, approve upon reasonable conditions, or disapprove such application within a reasonable period of time, and shall communicate promptly to the applying Owners the reasonable conditions of approval or all of the reasons for disapproval, as applicable. Reallocation of the Limited Common Element between or among such Units shall be accomplished by an amendment to the Declaration, prepared in accordance with this Declaration and the Act, executed by the Owners of the Units between or among whose Units the reallocation is made and by the president of the Association, and recorded in the Routt County, Colorado real property records.

**5.07 Encroachments.** If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction of any Building, or if any such encroachment shall occur as a result of settling or shifting of any Building, a valid easement for the encroachment and for the maintenance of the same shall exist. In the event any Building, any Unit, or any Common Element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

**ARTICLE 6**  
**THE ASSOCIATION; ADMINISTRATION, MANAGEMENT AND VOTING**

**6.01 Association Authority.** The affairs of CrossTimbers at Steamboat Townhomes shall be administered and managed by the Association, pursuant to the Act and this Declaration, and pursuant to the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association.

**6.02 Powers.** The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Project. The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Owners of Units to which at least two-thirds (2/3) of the votes in the Association are allocated, at a meeting of the Association called for that purpose.

**6.03 Declarant Control.** Subject to C.R.S. §38-33.3-303(6), the Declarant hereby reserves, and shall have, the Special Declarant Rights for Declarant, or any person designated by Declarant in writing delivered to the Executive Board, to appoint and remove the members of the Executive Board and the officers of the Association at any time and from time to time, in the sole discretion of the Declarant or the designee of Declarant, with or without cause, but only during the Association Control Period. Declarant may voluntarily surrender the right to appoint and remove the members of the Executive Board and the officers of the Association before termination of the Association Control Period, but in that event the Declarant may require, for the duration of the Association Control Period, that specified actions of the Association or the Executive Board, as described in a recorded instrument executed by the Declarant, shall be approved by the Declarant before such actions become effective.

**6.04 Managing Agent.** The Executive Board of the Association may contract with or employ any managing agent for the Association (including Declarant or any affiliate of Declarant), to perform inter alia any of the duties, services, powers and responsibilities of the Association set forth in the Act or in this Declaration or in its Articles of Incorporation or Bylaws.

**6.05 Membership in Association.** Each Owner (including Declarant with respect to Units from time to time owned by Declarant) shall be a member of the Association and shall remain a member until he or she ceases to be an Owner. Each Owner of an undivided fee interest in a Unit amounting to less than the entire fee interest in such Unit, including a co-owner as tenant-in-common or in joint tenancy, shall be a member of the Association. Each member shall comply strictly with the provisions of this Declaration and of the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association.

**6.06 Votes.** Each Unit shall be allocated one (1) vote on all and any matters to be voted on by the members of the Association. The allocation of votes among the Units shall be calculated on the basis of one (1) vote per Unit. Division of the vote allocated to a single Unit among multiple Owners of such Unit shall not be allowed; rather, the vote allotted to a Unit shall be voted entirely and undivided for or against or in abstention of an issue or matter put to vote among the members of the Association.

6.07 **Rules and Regulations.** Each member and his guests, invitees and tenants shall be bound by and shall comply with the Rules and Regulations of the Association duly made and adopted in the manner set forth in the Act and in the Articles of Incorporation or Bylaws. After notice and an opportunity to be heard, the Association may levy reasonable fines for violations of this Declaration or the Bylaws or Rules and Regulations of the Association. Any fine levied against an Owner, or against any person occupying such Owner's Unit with the consent of such Owner, shall be a special Common Expense assessment to such Owner's Unit.

6.08 **Ratification of Budget by Members.** Within thirty (30) days after adoption by the Executive Board of any proposed budget for the Project, the Executive Board shall mail, by ordinary first-class mail, a copy of the budget as adopted, or a summary thereof, to all members at the mailing addresses of the members determined under Section 13.05 below, and shall set a date for a meeting of members, which may be the annual meeting of members, to consider ratification of the budget, such meeting to be not less than 14 nor more than 60 days after mailing of the copy or summary of the budget to the members. Unless at that meeting Owners having a majority of the votes of all members reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected by the affirmative vote of Owners having a majority of the votes of all members, the periodic budget last ratified by the Members shall be continued until such time as the members ratify a subsequent budget proposed by the Executive Board.

## ARTICLE 7 MAINTENANCE AND REPAIRS; ALTERATIONS AND ARCHITECTURAL CONTROL

7.01 **Maintenance of Units.** Except as otherwise expressly provided in Section 7.02, each Owner shall be responsible for maintenance and repair of such Owner's Unit and any Limited Common Elements allocated exclusively to such Unit. Unit Owners shall be responsible for the removal of snow from stairs, steps, patios, porches, balconies and decks located upon such Owner's Unit to the extent not otherwise removed by the Snowmelt System (as hereinafter defined). Maintenance of exterior portions of Units shall be in accordance with the requirements established by the Association's Executive Board for uniformity of materials, colors, quality and other visual features and shall be subject to all provisions of Article 7 hereof.

7.02 **Maintenance of Certain Exterior Features.** Subject to Section 7.01, the Association shall be responsible for the maintenance and repair of the stone, stucco, siding, shutters, porches, balconies, decks, patios and painted surfaces on the exterior of the Building, the Building foundation and structural components, the Building roof (including snow removal), the concrete floor slab or crawl space under each Building, the exterior portion of windows (excluding glass breakage which shall be the responsibility of the Unit Owner), doors, window sills and door jambs, the walkways and other exterior improvements originally installed by the Declarant or replacements thereof, whether installed by the Declarant or the Association, all elements and components of the interior sprinkler system, fire monitoring system and smoke detectors, whether or not inside the Units, as well as all interior roadways, parking areas and pathways, the driveway and sidewalk Snowmelt System, all drainage facilities and all connections and appurtenances. In addition, the Association shall be responsible for the maintenance of

all private water and wastewater mains and all lawns, wetlands and landscaping located in the Project, and for the repair, replacement and removal of snow on common walkways and sidewalks which provide access to the Units. Expenses of maintenance and repair incurred in connection with the foregoing shall be Common Expenses of all Owners. The Association, its managing agent and the employees and contractors of each shall have access to any Unit at any time during an emergency, and otherwise from time to time during business hours and after reasonable notice to the Owner thereof, for purposes of carrying out the maintenance and repairs specified in this Section.

**7.03 Maintenance of Common Elements.** Except as otherwise provided in this Section or in Section 7.06, the Common Elements shall be administered, insured, conserved, managed, maintained, operated, cleaned, repaired, reconstructed and replaced by the Association, and all of the costs and expenses of such administering, insuring, conserving, managing, maintaining, operating, cleaning, repairing, reconstructing, and replacing are Common Expenses of all Owners. Notwithstanding the foregoing, (i) Limited Common Elements allocated solely to one Unit pursuant to this Declaration or the Act, even if maintained, cleaned, repaired, reconstructed and replaced by the Association, shall be charged solely to the Owner of such Unit, and (ii) those portions of Limited Common Elements serving two adjacent Units (including improvements in Party Walls), even if maintained, repaired, reconstructed and replaced by the Association, shall be charged jointly to the Owners of the contiguous Units, and each Owner shall pay one-half the cost thereof within fifteen (15) days after billing, and in the event the same is not paid when due, said sum shall be collected by the Association as a special assessment of the non-paying Owner only. The Association shall have an easement on, over, across and above all Units for access to and the maintenance, restoration, repair and replacement of existing or future Common Elements and improvements on Common Elements or other property the maintenance of which is the obligation of the Association.

**7.04 Maintenance of Snowmelt System.** The Association shall maintain in good working order at all times, and shall keep in full operation at all times during which there is snow or the likelihood of snow, the interior roadway, driveway and sidewalk snowmelt system (the "Snowmelt System"), the expense of which maintenance and operation shall be a Common Expense. The Snowmelt System and all components thereof and appurtenances thereto are expressly declared to be Common Elements. In no event shall the Snowmelt System be turned off during such time periods as there is snow or the likelihood of snow, except to the extent reasonably necessary to perform maintenance or repairs. In the event that it is necessary to shut down the Snowmelt System for repairs or maintenance during such time periods, the Snowmelt System shall not be inoperable for any longer than necessary to perform the required repairs or maintenance. During any interruptions in the operation of the Snowmelt System, the Association shall arrange and pay for, as a Common Expense, such alternative snow removal services as may be required to keep the interior roadways, driveways and sidewalks which are serviced by the Snowmelt System free of any accumulation of snow in excess of four (4) inches. The Association shall conduct such tests of the Snowmelt System as the City of Steamboat Springs Fire Marshal may reasonably request from time to time, upon reasonable notice to the Association, and shall permit access thereto for inspection purposes upon reasonable notice.

**7.05 Failure of Owner to Maintain.** In the event an Owner fails for any reason, after reasonable notice from the Association, to accomplish any maintenance, cleaning, repair or replacement



for which such Owner is responsible, then the Association may do so and the Common Expense therefor shall be a liability and obligation, as a special assessment, of such Owner only.

**7.06 Damage by Owners or Occupants.** If any Owner or occupant causes damage to the Common Areas, any other property owned by the Association, or property which the Association is otherwise obligated to maintain or repair, the Common Expense incurred in the cleaning, repair or replacement thereof shall be a liability and obligation, as a special assessment, of the Owner of the Unit who, or whose occupants, caused the damage. If any Owner or occupant causes damage to a Party Wall or to Limited Common Elements which another Owner or Owners are obligated to maintain or repair, the expenses incurred in the cleaning, repair or replacement thereof shall be the liability and obligation of the Owner of the Unit who, or whose occupants, caused the damage, which shall be due and payable within fifteen (15) days after billing, and in the event the same is not paid when due, said sum shall be collected by the Association as a special assessment against such Owner only.

**7.07 Access to Units.** The Association and its managing agent, and the employees and contractors of each, shall have the right and license to access any Unit at any time during an emergency, and otherwise from time to time during business hours and after reasonable notice to the Owner thereof, for purposes of administering, conserving, managing, maintaining, repairing, renovating or replacing the Common Elements, taking action pursuant to this Article 7, or otherwise exercising its powers and carrying out its purposes. Without limiting the foregoing, the Association and its managing agent, and the employees and contractors of each, shall have access to enter upon a Unit to make necessary or proper repairs, maintenance or replacement of any fire sprinkler systems, alarm systems, smoke detector systems, Snowmelt Systems, utility panels, utility lines, pipes, conduits, trunklines and connections, or any appurtenances thereto, and to the concrete slab or crawl space beneath any Building at any time during an emergency, and otherwise from time to time during business hours and after reasonable notice to the Owner thereof, for purposes of administering, conserving, managing, installing, maintaining, repairing, renovating or replacing any improvements located therein.

**7.08 Architectural Controls.** No improvement of any nature, including decks, patios, sheds, fences, pet shelters, lights, satellite dishes, antennas, sidewalks, landscaping or signs, shall be erected, placed, altered or rebuilt on any Unit, nor shall there be any alteration of the exterior, attic, foundations, subfloor or structural components of the Building or other structure on any Unit, including without limitation any alteration of colors, materials or landscaping, unless such action shall have been approved in writing by the Executive Board. The Executive Board will consider requests for placement of any satellite dish or antennae on the exterior of a Building only if such satellite dish is no larger than 18" in diameter. Notwithstanding any other provision of this Declaration or any rule of law, the Executive Board shall have no obligation to give consent or approval to any proposed addition or modification to roofs, attics, foundations, subfloors or structural components of the Building, any alteration of the exterior of the Building, or any item which the Association has an obligation to maintain. The Executive Board shall have the right to charge a reasonable fee and/or collect reimbursement of its expenses incurred in reviewing any action or matter for which consent or approval of the Executive Board is required. Prior to the commencement of any action or matter requiring approval of the Executive Board, the applicant shall submit to the Executive Board plans and specifications of the proposed work in such detail as the Executive Board shall require. The decision of the Executive Board may be conditioned on such

requirements and criteria as the Executive Board deems appropriate and shall be made within thirty (30) days after receipt by the Executive Board of all materials required by the Executive Board, unless such time is extended by mutual agreement. The Executive Board, its representatives, employees and agents, shall not be liable to any owner, occupant or any party for any matter resulting from mistakes in judgment, negligence, nonfeasance or any other action related to approval, disapproval or failure to approve any action or matter, and in no event shall the Executive Board or its representatives be responsible for the design, construction or any other matter related to the action or matter approved.

**ARTICLE 8**  
**ASSESSMENTS FOR COMMON EXPENSES; UTILITIES; LIEN;**  
**COLLECTION OF ASSESSMENTS; REMEDIES OF ASSOCIATION; AND**  
**ESTOPPEL CERTIFICATE OF ASSESSMENTS**

**8.01 Association to Levy Assessments.** The Association shall assess the Owners for payment of the Common Expenses. The Association shall fix, determine, assess and collect general Common Expense assessments from the Owners of all Units on an annual basis, based upon the Association's advance budget of the cash requirements needed by it to provide for the management of the Project and the administration and performance of the Association's duties during such assessment year, and to fund and contribute to any reserves deemed appropriate by the Executive Board of the Association, including (without limitation) a capital reserve for repairs, maintenance, replacement and acquisition of Association property and Common Elements (herein called the "Capital Reserve Fund") and an operating reserve to meet unanticipated Common Expenses and to permit payment of Common Expenses in advance of receipt of assessments (herein called the "Operating Reserve"). At the time of sale of any Unit, including the initial sale and conveyance by Declarant other than to an affiliate of Declarant, the transferee of such Unit shall pay to the Association for deposit in the Operating Reserve a refundable amount equal to three months' Common Expense assessments of the Association ("Operating Reserve Contribution"). The "Operating Reserve Contribution" shall be refunded to the Owner that made such payment, without interest, at the time of sale of the Unit by such Owner and the payment of a new Operating Reserve Contribution by such Owner's transferee. The amount of the Operating Reserve Contribution shall be based on a reasonable estimate of Common Expense assessment of the Association applicable to such Unit at the time of the applicable purchase and sale. Assessments permitted hereunder to the Capital Reserve Fund shall be made on a regular and periodic basis as part of the Association's annual budget. The Association may also fix, determine, assess and collect special Common Expense assessments authorized by the Act, this Declaration or in the Bylaws of the Association, subject to any limitations provided by the Act, this Declaration or the Bylaws. Common Expense assessments shall begin on the first day of the month following the month in which conveyance of the first Unit to an Owner other than the Declarant occurs. Until the Association makes a Common Expense assessment, the Declarant shall pay all Common Expenses. In addition to the assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the costs of any unanticipated maintenance, repair or replacement of any part of the Common Elements or any other items the maintenance of which is an obligation of the Association.

**8.02 Obligation to Pay Assessments.** Pursuant to C.R.S. §38-33.3-315(6), each Owner is liable for assessments made against such Owner's Unit during the period of ownership of such Unit.

Declarant covenants and agrees for each Unit from time to time owned by Declarant, and each Owner of a Unit, by acceptance of a deed of conveyance for such Unit, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree with and for the benefit of the Association to pay to the Association all of the assessments for Common Expenses levied and made to such Unit by the Association, and all and any fines levied by the Association against the Owner or any person occupying any part of the Unit with the consent of the Owner, for violation of the Rules and Regulations of the Association.

**8.03 Apportionment.** Common Expenses shall be assessed against all Units in accordance with the Allocated Interest of each Unit for Common Expenses as set forth in Exhibit "B" to this Declaration, or as reallocated pursuant to Section 3.03 hereof or by any proper amendment to this Declaration, except as provided in Section 8.05 below and except that the following Common Expenses shall be apportioned and assessed to one or more but less than all of the Units as follows:

- (a) Common Expenses for repairing, renovating and replacing a Limited Common Element, other than the Limited Common Elements described in C.R.S. §38-33.3-202(1)(b) serving more than one Unit, and costs of utility services to a Limited Common Element, shall be assessed and collected by the Association from only the Owner or Owners of the Unit or Units to which use and enjoyment of such Limited Common Element has been assigned and allocated, allocated among such Units in the proportion that the Allocated Interest appurtenant to each such Unit bears to the total of the Allocated Interests appurtenant to all Units to which use and enjoyment of such Limited Common Element has been assigned and allocated;
- (b) If any Common Expense is caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against such Owner's Unit as a special Common Expense assessment. If any fine is levied by the Association for violation of this Declaration or the Bylaws or Rules and Regulations of the Association against an Owner, or against any person occupying such Owner's Unit with the consent of such Owner, such fine shall be a special Common Expense assessment to such Owner's Unit only; and
- (c) Any assessments required by the Act to be made to the Owners of one or more but less than all of the Units shall be the responsibility of only such Owners.

The allocation of Common Expense liability among the Units has been calculated on the basis of the respective Allocated Interests for Common Expenses allocated to each Unit, which has been calculated on the basis described in Section 3.03 above.

**8.04 Liability of Co-Owners.** Each Owner is liable, and if a Unit is owned at any time by two or more persons in undivided interests pursuant to a form of concurrent co-ownership recognized by Colorado law, then each co-Owner of such Unit is jointly and severally liable with all other co-Owners of such Unit, to the Association for payment of all Common Expenses, assessments, fees (including attorney's fees), interest and charges levied against or with respect to such Unit, and for the performance and observance of all of the duties and responsibilities of an "Owner" with respect to the Unit.

8.05 Apportionment of Utility Expenses.

- (a) Utility Facilities. The expense of connecting, maintaining, operating, repairing and replacing facilities within the boundaries of a Unit which are connected or may be connected to utility lines, such as telephones, electrical appliances, gas fixtures, and the like, shall be the obligation and liability of the Owner or Owners of such Unit, and shall not be a Common Expense, regardless of the time at which such connection, repair or replacement is made.
- (b) Utilities Metered to Individual Units. Service charges for use of any utility service which is separately metered or allocated by the utility supplier to individual Units in the Project shall be apportioned by the Association among the Unit Owners on the basis of actual utility usage charged and metered or allocated by the utility supplier to each Unit. Alternatively, the Association may cause the utility supplier in such circumstances to render billings direct to the Owner or Owners of each Unit, in which event the service charges shall not be Common Expenses but shall be paid and discharged directly by such Owner or Owners. Electrical and telephone service will be separately metered to each Unit, and therefore such service charges shall be apportioned or billed as provided in the preceding sentence.
- (c) Utilities Metered to a Group of Units. Service charges for use of any utility service which is separately metered by the utility supplier collectively to more than one, but less than all, of the Units shall be an expense of the serviced Units only. Unless separately metered to any Unit, water service charges for the Building shall be a Common Expense as provided in the preceding sentence. It is expected that cable television will be connected and available only to such Units that physically make such service connection. Service charges for cable television service will be billed by the cable television service provider to the Association, and allocated and billed by the Association to those Unit Owners that make the service connection.
- (d) Utilities Not Metered or Metered to Project as a Whole. Service charges for use of any utility which is not metered to any Unit shall be apportioned among the Units on the basis of the respective Allocated Interest of each Unit. Unless separately billed to a Unit with separately metered water service fees, sewage collection service shall be apportioned as provided in the preceding sentence. Service charges for use of any utility which is metered solely and only to the Project as a whole shall likewise be apportioned among the Units on the basis of the respective Allocated Interest of each Unit. Water supply services and electrical service to the General Common Elements will be metered to the Project as a whole, and therefore service charges for such water supply and Common Element electric service shall be apportioned as provided in the preceding sentence.
- (e) Advance Billing. The Association may assess Owners of Units for utility service charges which are separately metered to each Unit or to a group of Units or to the entire Project, in advance based upon an annual budget, or in arrears based upon actual billings from the

respective utility suppliers. Such billings by the Association shall be deemed to be special Common Expense assessments to the affected Units, and the Association shall collect the same and account for and pay collections over to the respective utility suppliers. If such user charges are so billed and collected by the Association in advance, the Association shall adjust the accounts of the Owners at least annually, based upon actual metered usage of the utility services and the apportionment rules set forth above.

- (f) Utilities to Common Elements. Electrical, telephone, gas, water, sewage and trash collection services supplied to or within Common Elements which are not Limited Common Elements shall be metered to or allocated to the Association itself, and all of the charges for such common electrical, telephone, gas, water, sewage and trash collection services shall be included as part of the Common Expenses assessed to all Units and apportioned among the Units in accordance with their Allocated Interests.

**8.06 Procedures for Payment.** The Bylaws of the Association shall establish the procedures by which the general and special Common Expense assessments shall be made known to and paid by the Owners. Such procedures may include the determination and levying of such assessments as a periodic (but not less often than quarter annual) installment billing of the annual general Common Expense assessment based upon the annual budget of the Association (including funding of reserves), in which event the general Common Expense assessment shall be deemed to have been severally incurred as of the respective dates of the installment billings.

**8.07 Suit.** An action may be brought by the Association in a court of competent jurisdiction to recover unpaid general and special Common Expense assessments, late payment charges, and accrued interest from the Owner or Owners liable for payment thereof, with or without foreclosing the lien of the Association described in Section 8.10 below. In any such action the Association shall also be entitled to recover judgment from such Owner or Owners for all of the Association's attorney's fees, costs of discovery and court costs incurred in connection with such suit. All of such attorney's fees and costs incurred after delinquency of general or special Common Expense assessments shall be a special assessment to the Unit of the delinquent Owner in any event.

**8.08 Interest; Late Charges.** Unpaid general and special Common Expense assessments shall bear interest from and after the date the same are due until paid at the interest rate set from time to time by the Association, but not to exceed 21% per annum. If the Association shall not have set such interest rate, then the interest rate shall be 21% per annum, compounded annually. The Bylaws of the Association may also empower the Association to levy reasonable late charges against a delinquent Owner and such Owner's Unit for late payment of any general or special Common Expense assessment.

**8.09 Suspension of Voting Rights.** The Association may, during the period any general or special Common Expense assessment is past due and unpaid by an Owner, suspend the voting rights and privileges in the Association allotted to such Unit; provided, however, that such suspension may be imposed only after at least three (3) days' advance written notice given by the Association to the delinquent Owner and to the First Lienor of the affected Unit; and provided, further, that no suspension

of voting rights shall affect the rights of any First Lienor to vote pursuant to a proxy granted in a first lien security interest on the affected Unit.

**8.10. Lien.** All unpaid general Common Expense assessments (including, but not limited to, funds budgeted for contributions to any reserves approved by the Executive Board of the Association), all unpaid special Common Expense assessments (including, but not limited to, Common Expenses incurred for Limited Common Elements, and utility charges separately metered to Units or Limited Common Elements), all fines for violations of the Declaration or Rules and Regulations or Bylaws of the Association which are levied against an Owner of a Unit, accrued interest on and any late charges levied with respect to any unpaid general or special Common Expense assessment or fine, attorney's fees and costs of discovery and suit incurred in connection with enforcement of any unpaid general or special Common Expense assessment or fine (whether or not suit is brought), and unpaid fees and charges for the use, rental or operation of the Common Elements other than Limited Common Elements, shall each and all constitute a continuing lien on such Unit pursuant to and as granted by C.R.S. §38-33.3-316, and shall also constitute a continuing lien on and security interest in the furniture, furnishings, appliances, equipment and fixtures in such Unit, in favor of the Association, as secured party. Such lien of the Association on the Unit shall be prior and superior to all other security interests and non-consensual liens and encumbrances on the Unit EXCEPT as provided in C.R.S. §38-33.3-316(2), as amended from time to time.

The Association's continuing lien shall be perfected and attach to each Unit from the date of the initial recording of this Declaration in the real property records of Routt County, Colorado. The Association's lien shall also attach to the furniture, furnishings, appliances, equipment and fixtures within a Unit from the date any such personalty or fixtures became situated in such Unit or from the date of the initial recording of this Declaration in the real property records of Routt County, Colorado, whichever date is later, but such lien shall be inchoate until any assessment levied against such Unit has become past due. Declarant and each successive Owner of an interest in a Unit, by acquiring title to such interest, grants and is hereby conclusively deemed to have granted to the Association, as secured party, a security interest in all furniture, furnishings, appliances, equipment and fixtures at any time situated in such Unit, to secure payment of all assessments, charges, fees, interest and other sums at any time due and unpaid to the Association with respect to such Owner's interest in such Unit. This Declaration shall constitute a financing statement when a copy hereof is filed with the Colorado Secretary of State or with the Routt County Clerk and Recorder. Such security interest in favor of the Association shall be governed by the Colorado Uniform Commercial Code and shall, nevertheless and whether or not a financing statement for this security interest has been filed, be junior, inferior and subordinate at all times to a perfected security interest in any of such furniture, furnishings, appliances, equipment and fixtures to secure purchase money financing thereof or in favor of the First Lienor of the Unit, as secured party.

No recordation of any claim or lien by the Association after the initial recordation of this Declaration is required. However, the Association may, in its sole discretion, determine to record in the real property records of Routt County, Colorado a notice of such claim of lien, setting forth therein (i) the amount of the unpaid sums (itemized showing general and special Common Expense assessments, fines, interest, fees and charges), (ii) the name of the Owner or reputed Owner and the legal description of the Unit against which such lien is asserted, and (iii) a statement that such lien extends to reasonable attorney's

fees and costs of the Association incurred in enforcing such lien. Failure of the Association to record any such notice shall not, however, defeat such lien nor affect its priority.

If an assessment is payable in installments, and if an Owner shall default and fail to pay any installment, then unless the Act requires otherwise, the Executive Board may elect, by notice to the defaulting Unit Owner, to accelerate payment of the full amount of the assessment and to require the full amount of such assessment to be immediately due and payable. In the event of such acceleration, the full amount of the assessment is a lien from the time of the acceleration of the assessment by the Executive Board.

**8.11 Foreclosure.** The Association's lien against a Unit as described in Section 8.10 above may be foreclosed by the Association in like manner as foreclosure of a mortgage on real estate under Colorado law. The Association shall be entitled to purchase the Unit at the foreclosure sale, and thereafter to acquire, hold, lease, mortgage or convey the same. The Association's lien and security interest in all furniture, furnishings, appliances, equipment and fixtures in a Unit may be foreclosed by the Association in the manner provided in the Colorado Uniform Commercial Code.

**8.12 Receiver.** In any action by the Association to collect assessments or to foreclose the lien of the Association for unpaid assessments, the court may appoint a receiver of a Unit pursuant to C.R.S. §38-33.3-316(9), and may also order such receiver to take possession of all furniture, furnishings, appliances, equipment and fixtures in such Unit, and to collect all of the rents, income and profits therefrom, during the pendency of such action and until such assessments, and all interest, charges, fees and costs, are paid in full. The Association shall be entitled to appointment of such receiver as a matter of right without regard to the solvency or insolvency of the then Owner of said Unit and personal property and without regard to the value thereof, and such receiver may be appointed by the Routt County District Court upon ex parte application of the Association and without notice, notice being hereby expressly waived by all Owners. All rents, income and profits therefrom shall be applied by such receiver according to the law and the orders and directions of the court, and the court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the receivership action to the extent of the Association's general and special Common Expense assessments. All Owners, tenants, occupants and lienors of a Unit shall be deemed to have confessed the jurisdiction of the Routt County District Court to appoint a receiver for the Unit and the furniture, furnishings, appliances, equipment and fixtures therein.

**8.13 Conditional Assignment of Rents.** Each Owner hereby conditionally assigns to the Association as additional security for unpaid general and special assessments, charges, interest, fees and costs, all rights in and to any rental management contract affecting the Owner's Unit and all net rents and net income otherwise payable to the Owner for occupancy of his Unit for and during all periods any assessments or other sums remain unpaid to the Association after the same were due, and during such periods the rental management agent for the Unit of the delinquent Owner shall forthwith pay over to the Association upon its written demand all rents and income otherwise payable to the delinquent Owner, but not to exceed the amounts due and unpaid to the Association. All net rentals and net income received by the Association pursuant to this Section 8.13 shall be paid and applied as follows: first, to the expenses incurred by the Association in obtaining such rentals and income (including attorney's fees incurred);

second, to payment to the Association of late payment charges and attorney's fees owed to it by the Owner; third, to payment to the Association of the accrued interest on all unpaid assessments; fourth, to payment to the Association of the delinquent general and special Common Expense assessments levied against such Unit, in the chronological order such assessments became due; and last, to payment to the First Lienor on the first lien security interest encumbering such Unit, if any, and if none, to payment to the delinquent Owner. Any rental management agreement respecting any Unit shall be subject and subordinate to the exercise by the Association of its rights under this Section 8.13.

**8.14 Liability of Transferee.** In case of sale or other voluntary transfer of a Unit or an interest therein with respect to which general or special Common Expense assessments, interest, charges, costs or fees are accrued and unpaid to the Association as of the date of transfer, the purchaser or other transferee shall be jointly and severally liable with the seller or transferor for such unpaid sums and shall be deemed to have personally assumed the obligation for payment of same. Therefore, if any lienor (including the First Lienor) of a Unit obtains title to such Unit by a voluntary deed in lieu of foreclosure, such lienor shall be jointly and severally liable for all unpaid general and special Common Expense assessments, charges, interest, costs and fees accrued against such Unit as of the date of transfer, and such lienor shall be deemed an Owner for all purposes from and after such transfer. However, if the First Lienor obtains title to a Unit by sheriff's deed or public trustee's deed upon foreclosure of the first lien security interest against a Unit, then such First Lienor is not liable for any unpaid assessments, charges, interest, costs or fees which accrued against such Unit prior to the vesting of title in such beneficiary, EXCEPT as provided in C.R.S. §38-33.3-316(2)(b).

**8.15 Estoppel Certificate.** Within fourteen (14) calendar days after written request of any Owner or such Owner's designee or to the holder of a security interest in a Unit or its designee, or of any title insurer, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association shall issue a written statement to the requesting party setting forth with respect to such Unit the amount of any unpaid general and special Common Expense assessments, interest, charges, fees and costs due with respect to such Unit. Such statement, for which a reasonable fee may be charged, is binding upon the Association in favor of the person or entity who requested such statement and who has relied thereon in good faith, and when such request has been made by a title insurer, shall be binding upon the Association also in favor of the person or entity whose interest in the Unit was insured by such insurer. If the Association fails to issue and mail such statement to the requesting party within fourteen (14) calendar days after actual receipt by the Association's registered agent of such written request, all unpaid general and special Common Expense assessments, charges, fees, interest and costs which became due prior to the date such request was actually received by the Association shall be subordinated to the lien or other interest in the Unit of the person requesting such statement, and when such request has been made by a title insurer, shall be subordinated to the lien or other interest in the Unit of the person whose interest in the Unit was insured by such insurer. In addition, the beneficiary of a first lien security interest, and the insurer or guarantor thereof, who has sent a prior written request to the Association in the manner described above, shall receive timely written notification from the Association of (i) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing the first lien security interest, (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Unit encumbered by the first lien security interest, (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the



Association, and (iv) any proposed action that requires the consent of a specified percentage of the First Lienors of Units. The Association shall have current copies of this Declaration and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, and the books, records of receipts and expenditures, and financial statements of the Association, available for inspection by any Owner and any First Lienor during normal weekday business hours. If no audited financial statements of the Association are available, then any holder, insurer or guarantor of a first lien security interest shall be allowed to have an audited financial statement prepared at the sole expense of such holder, insurer or guarantor.

**8.16 First Lienor Right to Pay.** Any First Lienor of a Unit may (but shall not be required to) pay any unpaid general or special Common Expense assessments, accrued interest, charges, fees or costs with respect to such Unit, and upon such payment such First Lienor shall be subrogated to the Association's lien on such Unit for the amount so paid, and shall be subrogated to the rights and remedies of the Association to collect such amount.

## ARTICLE 9 INSURANCE

**9.01 Policies to be Maintained.** Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant or an Affiliate of Declarant, the Association shall maintain, to the extent reasonably available:

- (a) Property insurance on the Common Elements and the Units and all fixtures therein (but not including furniture, furnishings or other personal property owned and supplied or installed by a Unit Owner), all structures situated on real property owned by the Association, and all personal property owned by the Association, with extended coverage "all risks" endorsement, in an amount not less than 100% of the maximum insurable value thereof less applicable deductibles (being 100% of the current replacement cost excluding land, excavations, foundations, and other items normally excluded from such policies);
- (b) Commercial general liability insurance pursuant to the Act, with limits of not less than \$1,000,000 per occurrence and not less than \$1,000,000 aggregate, or with higher limits deemed sufficient in the judgment of the Executive Board;
- (c) Fidelity bond or insurance coverage against dishonest acts on the part of directors, managers, managing agent, trustees, employees or volunteers of the Association responsible for handling funds belonging to or administered by the Association, such bond or insurance coverage to be in the name of the Association and in an amount not less in aggregate than 2 months' current Common Expense assessments of the Association plus reserves, as calculated from the current budget of the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers; and

- (d) Such additional endorsements to the above policies, and such other insurance, in such amounts or with such provisions as the Executive Board may consider necessary or advisable against such other insurable hazards or in connection with such matters as may from time to time be commonly insured against in the case of similar condominiums in similar locations elsewhere or which the Executive Board deems to be reasonable and proper.

**9.02 Endorsements.** The Executive Board shall make reasonable efforts to obtain policies of casualty insurance providing or containing the following provisions or endorsements: (i) the insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners; (ii) each Unit Owner may obtain additional insurance covering his property interests at such Owner's own expense; (iii) the insurance coverage cannot be canceled, invalidated, reduced or suspended because of the conduct of any one or more Unit Owners or their respective lessees, employees, agents, contractors, invitees and guests; (iv) the insurance coverage cannot be cancelled, invalidated or suspended without at least thirty (30) days' prior written notice to the Association, and if any proposed cancellation, invalidity or suspension is due to the conduct of any officer or employee of the Association or its managing agent, such insurance coverage cannot be so cancelled, invalidated or suspended without prior written demand that the Executive Board cure the defect and then only if the defect is not cured within thirty (30) days after demand; and (v) the insurer waives its right of subrogation as to any claims against each Unit Owner. Evidence or certificate of continuing insurance shall be delivered by the Association to any Owner or any First Lienor promptly upon written request.

**9.03 Standards for Insurers.** So long as Best's Insurance Reports is published, each hazard insurance policy carried by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of Class B/VI or better, or by an insurance carrier which has a current rating by Best's Insurance Reports of Class V, provided such carrier has a general policy holder's rating of at least A. Each carrier must be specifically authorized by law to transact business within Colorado. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, any Owner or any First Lienor; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses not required by the Act (other than insurance conditions) which could prevent the Association or the insurance trustee under C.R.S. §38-33.3-313(5) from collecting insurance proceeds; or (iv) the policy provisions violate the requirements of the Act.

**9.04 Owners' Policies.** Each Owner shall be responsible to obtain and pay premiums for all insurance covering loss or damage to personal property within such Owner's Unit, and is also responsible to obtain and pay premiums for all liability insurance covering injury to persons, death or damage to personal property occurring within such Unit. Any such policy shall contain waivers of subrogation against the Association and shall be so written that the liability of the carriers issuing insurance for the Association shall not be affected or diminished thereby. Each Unit Owner shall be liable for any increase in premiums or coverage for insurance maintained by the Association as a result of improvements or fixtures installed or made by an Owner within his Unit, and each Owner shall promptly notify the Association in writing of any such improvements or fixtures which may cause or require any such increase

in premiums or coverage. Each Owner shall bear the sole risk of loss for all improvements and fixtures installed or made to his Unit which were not the subject of written notice to the Executive Board. Any Owner who obtains casualty insurance covering his Unit, other than for only personal property at any time situated within such Unit, shall file a copy of such policy with the Association within thirty (30) days after obtaining such insurance coverage.

**9.05 Premiums.** Premiums on all insurance policies carried pursuant to this Article 9 by the Association shall be Common Expenses, apportioned among the Owners of Units as provided in the Act or in Article 8 above.

## **ARTICLE 10 SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves the right, from time to time during only the Declarant Control Period, to perform each and all of the acts and to exercise each and all of the special Declarant rights hereinbelow specified (the "Special Declarant Rights"). The Special Declarant Rights hereby reserved by Declarant are the following:

**10.01 Completion of Improvements; Exercise of Development Rights.** The right to complete or make improvements within the Project indicated or shown on the Plat; and the right to exercise any development right reserved in Article 4 of this Declaration.

**10.02 Sales, Management and Marketing.** The right to maintain sales offices, management offices, and model units of any sizes in any of the Units in the Project, and to locate and relocate any such offices and models anywhere within the Project. Such reserved Special Declarant Right extends to any Unit of any size, and there is no limit with respect to the number of such sales offices, management offices, and model units.

**10.03 Signs.** The right to place and maintain signs on the Project advertising the Project, and to relocate and remove such signs.

**10.04 Reserved Easements.** The right to reserve or create easements through the Common Elements, and the right to use or allow others to use such easements, as may be reasonably necessary for the purposes of discharging the Declarant's obligations under the Act and this Declaration, for making, completing or using improvements within the Project, for making, completing or using improvements within any property adjacent to the Project whether or not added to the Project, and for exercising any reserved Special Declarant Rights are hereby reserved in Declarant. Without limitation, such easement also includes the right to construct and maintain underground utility lines, pipes, wires, ducts, conduits and other utility facilities on, under and across lands within the Project for the purpose of furnishing utility services and providing vehicular and pedestrian access to any Building or improvements to be constructed on any property adjacent to the Real Estate whether or not added to the Project, including the Expansion Property and any Unspecified Property. Declarant's reserved easement hereunder also includes the right to grant easements to public utility companies and to convey improvements within those easements. If Declarant grants any such easements, Exhibit "A" to this Declaration should be amended by Declarant to

include reference to the recorded easement, and shall include the right to declare and establish easements for and to construct, maintain, repair, replace and use drives and access roads for access within and across the Common Elements to provide access to, and for the benefit of, the Expansion Property and/or the Unspecified Property.

**10.05 Control of Association and Executive Board.** Subject to C.R.S. §38-33.3-303(6), the right for Declarant, or any person designated by Declarant in a writing delivered to the Executive Board, to appoint and remove the officers and members of the Executive Board at any time and from time to time, in the sole discretion of the Declarant or the designee of Declarant, with or without cause, during the Association Control Period.

**10.06 Warranty Work.** The right to perform warranty work, and repairs and construction work and to store materials in secure areas, in Units and on Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Unit Owner or Mortgagee.

## **ARTICLE 11 ADDITIONAL RESERVED RIGHTS**

In addition to the Special Declarant Rights set forth in Article 10 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

**11.01 Dedications.** The right to establish, from time to time, by dedication or otherwise, utility, access (including emergency access) and other easements for purposes of benefiting the Project and the Owners, including but not limited to streets, paths, walkways, skiways, drainage or recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Unit Owners within the Project.

**11.02 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 parking and/or recreational facilities, which may or may not be a part of the Project, for the benefit of the Unit Owners and/or the Association.

**11.03 Future Amendments to Colorado Common Interest Ownership Act.** The right to amend this Declaration from time to time, without necessity of the consent of Owners, First Lienors, or the Association, if necessary to bring the Declaration and/or the Project into compliance with any amendments to the Act hereafter adopted.

**11.04 Other Rights.** The right to exercise any other reserved right created by any other provision of this Declaration or permitted by the Act.

**ARTICLE 12**  
**PROHIBITED ACTIVITIES AND REQUIREMENTS**

**12.01 Prohibited Activities.** Without limiting other provisions of this Declaration, the following restrictions, limitations and affirmative obligations shall apply to all Owners and occupants of Units in the Project:

(a) Noxious, offensive or illegal trades, services or activities shall not be conducted within the Project, nor shall anything be done therein which constitutes a nuisance to the Owners of other Units, or their tenants, by reason of unsightliness, the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

(b) Except as otherwise approved by the Executive Board, no pets other than tropical fish and exotic birds in cages shall be allowed or kept in any Unit, except no more than one (1) dog and two (2) cats may be kept and maintained by an Owner occupying a Unit subject to the following provisions, and subject to such other rules and regulations as may be adopted from time to time by the Association, and provided further that no such dog or cat shall be raised, bred or kept for commercial purposes:

(i) Each such dog or cat shall be immediately registered with the Association, whereupon a deposit in the amount of \$1,000.00 ("Fine Deposit") shall be paid to the Association by the Owner of the Unit upon which the dog or cat resides.

(ii) The Fine Deposit shall be utilized by the Association for the payment of fines at the rate of \$50.00 per violation, or at such other rate as the Association shall establish from time to time, for each and every violation of the rules, regulations and restrictions set forth herein or as adopted by the Association from time to time.

(iii) No pet shall be permitted to bark or otherwise disturb the peace, or in any other manner to disturb or bother an Owner, or an Owner's family members, guests, invitees or tenants.

(iv) No pet shall be permitted outside the exterior walls of a Townhome unless such pet is on a leash and is accompanied by the Owner or the Unit upon which such pet resides, or a family member, guest or invitee of such Owner.

(v) The Owner of a Unit upon which a pet resides shall be responsible for the immediate removal of any and all fecal material deposited upon any portion of the Property, including but not limited to the Common Elements, and including the Units located on the Property.

(vi) The Owner of a Unit upon which a pet resides shall be strictly liable for any and all damages caused by such pet, including but not limited to property damage and personal injury, and for the costs, expenses and attorneys' fees of any person damaged or injured

by the actions of such pet, and each such Owner of a Unit upon which a pet resides, by accepting title to a Unit, hereby confesses judgment on the issue of liability, without regard to negligence, for the damages or injuries caused by any pet residing upon such Owner's Unit.

(vii) The Executive Board of the Association shall have the absolute authority to mandate the permanent removal from the Property of any pet whose conduct is the source of ongoing irritation or disturbance to any other Owner, or the family members, guests, invitees or tenants of such Owner, or of any unauthorized or unregistered pet, and each Owner authorizes the Association, by its Board of Directors, to enter upon a Unit at any time for the purpose of removing any such pet from the Property and committing it to the custody of the Steamboat Springs Police Department, Animal Control Division. The expenses of such removal and/or commitment shall be paid from such Owner's Fine Deposit.

(viii) In the event that an Owner's Fine Deposit is utilized to pay the fines levied against the Owner or the expenses incurred by the Association in removing and/or committing the pet of such Owner or its otherwise utilized pursuant to the provisions of this Article, the Owner upon whose Unit the pet resides shall be liable for such additional assessments as may be required by the Association to maintain such Owner's Fine Deposit in the minimum amount of \$1,000.00, which additional assessments shall be levied and collected as a special assessment upon such Owner and such Owner's Unit in accordance with the provisions of Article 8 hereof and such other provisions hereof as may apply.

(c) Refuse, garbage, trash, plant clippings, plant waste, compost, scrap or debris of any kind shall not be kept, stored or allowed to accumulate on any Unit and shall be promptly disposed of in receptacles provided for that purpose. There shall be no open fires, incinerators or burning of rubbish or trash within the Project.

(d) There shall be no outside storage of building materials, supplies, tools or equipment.

(e) Established drainage patterns within the Project shall not be modified or interfered with.

(f) There shall be no storage of boats, trailers, campers, recreational vehicles, motorcycles, snowmobiles or other equipment at the Project other than inside garages or in designated and approved storage areas. Abandoned or inoperable vehicles or equipment of any kind shall not be parked or stored within the Project. Vehicles or equipment shall not be repaired or serviced in the Project. The Association may establish rules and regulations limiting the number of vehicles which may be parked at the Project. The Association shall have the right, but not the obligation, to remove improperly parked or stored vehicles at the expense of the owner thereof, and the cost thereof shall become an assessment against the Unit of the owner who or whose occupant parked or stored the vehicle. The Association and the Declarant shall not be liable for any loss or damage resulting from such removal.

12.02 **Parking.** The parking spaces located in the parking structure are reserved for visitor parking only, and may not be used by Unit Owners, even temporarily. Unassigned parking is available on a first-come, first-served basis. Parking is not permitted in front of any garage comprising part of a Unit. Without limiting other provisions of this Declaration, the Association may establish and collect fines for violation of rules relating to parking, which fines shall be assessed against the Owner of the Unit who or whose occupant commits the violation.

## ARTICLE 13 GENERAL

13.01 **Rights Transferable.** Any Special Declarant Rights and any Additional Reserved Right created or reserved pursuant to this Declaration for the benefit of Declarant, or created or reserved in any proper amendment to this Declaration, may be transferred to any person by an instrument describing the right transferred and recorded in the real property records of Routt County. Each such instrument of transfer shall be executed by the transferor Declarant and the transferee. After transfer, the transferee shall be deemed to be the "Declarant" for purposes of exercising the transferred Special Declarant Right or Additional Reserved Right.

13.02 **Quality of Work.** Any repairs, renovation, improvement or restoration of any portion of the Common Elements by the Association, or by any Owner pursuant to any right or permission granted pursuant to this Declaration or the Act, shall be done and performed diligently, in good faith, and in a good and workmanlike manner, using good quality materials, all consistent with the quality of workmanship, materials and style of the Project as constructed by Declarant, to the extent then reasonably and economically feasible.

13.03 **Amendment.** This Declaration may be amended (a) upon the written approval in recordable form of the Owners of at least 67%, and the First Lienors of at least 67%, of the Units then subject to this Declaration, (b) by the Association and one or more Owners for the purposes and in accordance with the procedures described in Sections 3.04, 3.05 or 5.06, and (c) by the Declarant upon exercise of any Special Declarant Rights and pursuant to Section 11.03 herein; provided, however, that no amendment hereto may be in conflict with or prohibited by the Act.

13.04 **Property of the Association.** The Association may acquire, by purchase, lease or otherwise, and may develop, improve, manage, lease, operate, use, encumber and hold for the common use and benefit of all the Owners, real property and all kinds of structures and improvements on and interests in real property, and tangible and intangible personal property, and may sell, convey and dispose of all of such property or any portion thereof or interests therein. Title to all such property shall be in the name of the Association or a nominee for the Association. Each Owner may use property of the Association in accordance with the purposes for which it is intended, without hindering, impeding or imposing upon the rights of the other Owners, but in accordance with Association Rules and Regulations and subject to the right of the Association to allocate any such property for the exclusive use of the Owners of one or more but less than all of the Units, to impose and receive payments, fees, or charges for the use, rental or operation of such property, and to regulate the use of such property. All costs and expenses of acquiring, developing, improving, managing, leasing, operating, using, holding, selling and

disposing of such real and personal property, including (without limitation) all sums paid as fees, costs, interest or payments (whether in installments or otherwise) on any loan or promissory note or any mortgage or other security arrangement or encumbrance securing such loan or promissory note, made or entered into by the Association to finance or pay for all or any part of such acquisition, development, improvement, management, leasing, operating, using, holding, selling and disposing, shall be Common Expenses. Any property acquired by the Association, and any development, improvement, management or lease thereof, shall conclusively be deemed to be for the common use and benefit of the Owners if such property is made available by the Association for the use by the Owners in the manner for which the same is intended, subject to reasonable Rules and Regulations and the imposition and receipt of payments, charges, and fees of the Association duly established from time to time for the use, rental or operation thereof, irrespective of whether or not any particular Owner does in fact use such property.

**13.05 Registration by Owner of Mailing Address.** Each Owner and each First Lienor shall register his mailing address with the Association as provided in its Articles or Bylaws, and shall register with the Association all changes in such mailing address, so that the Association will at all times have a current mailing address of all Owners and First Lienors. If an Owner or First Lienor fails to so register his mailing address, or if such registration occurred more than one year before a notice is given, then either the mailing address shown in the deed to such Owner or in the security interest of such First Lienor, or the mailing address of such Owner or First Lienor as contained in the records of the Routt County Treasurer, shall also conclusively be deemed to be the mailing address of such Owner or First Lienor, respectively. Periodic statements for general assessments, notices of special assessments, notices of meetings, and other routine notices from the Association to an Owner shall be sent by regular mail, postage prepaid, addressed to the name of the Owner at the most current mailing address of such Owner in the records of the Association. Any Owner may give written notice to other Owners in the same manner. All other notices or demands intended to be served by the Association upon an Owner shall be sent by certified mail, postage prepaid, return receipt requested, addressed to the name of the Owner at his most current mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the registered address of the registered agent of the Association. The Association or managing agent for the Association shall at all times keep and maintain up-to-date records of the names and addresses of all First Lienors of Units.

**13.06 Remedies.** The Association, and any aggrieved Unit Owner, shall have the right of action in equity and at law against any Unit Owner (including Declarant) who fails to comply with the provisions of this Declaration or the Articles of Incorporation, Bylaws, Rules or Regulations of the Association or the Act. In addition, any Unit Owner shall have the right of action in equity and at law against the Association if the Association fails to comply with the provisions of this Declaration or the Articles of Incorporation, Bylaws, Rules and Regulations of the Association or the Act.

**13.07 Invalidity.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.



13.08 **No Time-Sharing.** No time share estates shall be created with respect to any Unit in the Project, and time-sharing of any Units subject to this Declaration in any form is not permitted.

13.09 **Supplemental to Colorado Law.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

13.10 **Gender and Number.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

13.11 **Headings.** The headings of sections and paragraphs in this Declaration are for convenience of reference only, and shall not be deemed to expand, limit or define any of the provisions hereof.

13.12 **Limitations on Declarant's Obligations.** Nothing contained in this Declaration or in the Articles of Incorporation, Bylaws, or Rules and Regulations of the Association shall be deemed to impose upon Declarant or the successors or assigns of Declarant any obligation to build, construct, or provide the Building or improvements or to warrant the Building or improvements which are in fact constructed. All obligations upon Declarant of this nature, if any, shall arise only from any executed purchase agreement signed by Declarant and a prospective Unit Owner.

13.13 **Easements of Record.** The recording data for recorded easements and licenses appurtenant to or included in the Real Estate or to which any portion of such Real Estate is or may be subject are set forth in Part II of Exhibit "A" to this Declaration.

13.14 **Incorporation of Exhibits.** All exhibits referenced in this Declaration are incorporated herein by this reference.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration of Conditions, Covenants, Restrictions and Easements for CrossTimbers at Steamboat, a Colorado Common Interest Community, this 29<sup>th</sup> day of OCTOBER, 1998.

CTSB, LLC

By: \_\_\_\_\_

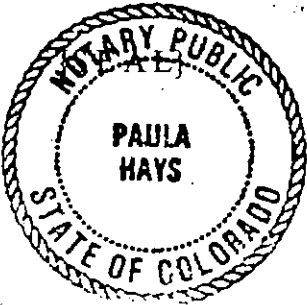
Stanley S. Beard, Manager

STATE OF COLORADO )  
 )  
COUNTY OF ROUTT )

The foregoing instrument was acknowledged before me this 29th day of October,  
1998 by Stanley S. Beard as Manager of CTSB, LLC.

Witness my hand and official seal.

My commission expires: May 16, 1999



Paula Hays  
Notary Public

501596 B-751 P-1641 10/30/1998 05:52P PG 34 OF 37

1596 B-751 P-1641 10/30/98 05:22P PG 35 OF 37

Paula Hays  
Notary Public

**EXHIBIT "A"**

**ATTACHED TO THE DECLARATION OF CONDITIONS, COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR CROSSTIMBERS AT STEAMBOAT, A  
COLORADO COMMON INTEREST COMMUNITY**

**PART I**

**DESCRIPTION OF PROPERTY SUBJECTED  
TO THIS DECLARATION**

The real property situated in the County of Routt, State of Colorado, which is described in the Plat for CrossTimbers at Steamboat, Filing No. 1, recorded in File 12613 of the Routt County, Colorado real estate records.

**PART II**

THE RECORDING DATA FOR RECORDED EASEMENTS AND LICENSES APPURTENANT TO, OR INCLUDED IN, THE ABOVE-DESCRIBED PROPERTY OR TO WHICH ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY IS OR MAY BECOME SUBJECT IS AS FOLLOWS:

1. The traverse and right-of-way for the Spires Ditch No. 1, recorded at File No. 325.
2. Easement for snow removal, said easement being 10 feet wide and lying adjacent to the Easterly and Westerly right-of-way line of the road herein excepted from the subject property, as reserved in Warranty Deed from Sunray Land Corporation to International Investment Brokers, Ltd., a Colorado corporation, recorded July 25, 1966 in Book 325 at Page 723.
3. All the notes, provisions and easements as shown on the Plat of Base Meadows South filed August 4, 1982 at File No. 9187.
4. Terms, agreements, provisions, conditions and obligations as contained in Public Access Agreement recorded August 4, 1982 in Book 568 at Page 415.
5. All the notes, provisions and easements as shown on any Plat of CrossTimbers at Steamboat now of record or to be recorded in the future.

**EXHIBIT "B"**  
**ATTACHED TO THE DECLARATION**  
**OF CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS**  
**FOR CROSSTIMBERS AT STEAMBOAT,**  
**A COLORADO COMMON INTEREST COMMUNITY**

**UNIT DESIGNATIONS AND TABLE OF ALLOCATED INTERESTS**  
**FOR PHASE I**

<u>Unit Number</u>	<u>Number of Bedrooms</u>	<u>Vote in the Affairs of the Association</u>	<u>Allocated Interest</u>
Unit 1, Bldg. 1	4	1	9.091%
Unit 2, Bldg. 1	2	1	7.272%
Unit 3, Bldg. 1	2	1	7.272%
Unit 4, Bldg. 1	4	1	9.091%
Unit 1, Bldg. 2	3	1	8.181%
Unit 2, Bldg. 2	3	1	8.181%
Unit 3, Bldg. 2	3	1	8.181%
Unit 4, Bldg. 2	3	1	8.181%
Unit 1, Bldg. 10	4	1	9.091%
Unit 2, Bldg. 10	3	1	8.181%
Unit 3, Bldg. 10	3	1	8.181%
Unit 4, Bldg. 10	4	1	<u>9.091%</u>
			100%

**ALLOCATION FORMULA**

$$100\% = (A \times X) + (B \times 0.9X) + (C \times 0.8X)$$

Where,

A = total number of 4 bedroom Units

B = total number of 3 bedroom Units

C = total number of 2 bedroom Units

X = Allotted Interest assessed to each 4-bedroom Unit

\* \* \* \* \*

5

**AMENDMENT TO DECLARATION OF CONDITIONS,  
COVENANTS, RESTRICTIONS AND EASEMENTS FOR  
CROSSTIMBERS AT STEAMBOAT, A COLORADO COMMON  
INTEREST COMMUNITY**

**(CROSSTIMBERS AT STEAMBOAT, FILING NO. 2)**

**THIS AMENDMENT TO DECLARATION OF CONDITIONS, COVENANTS,  
RESTRICTIONS AND EASEMENTS** is made this 10th day of September, 1999 by  
CTSB, LLC, a Texas limited liability company authorized to do business in the State of  
Colorado ("Declarant"), whose address is 500 West Texas Avenue, Suite 705, Midland,  
Texas 79701.

**I.  
RECITALS:**

Declarant has heretofore, made, declared and filed a Declaration of Conditions, Covenants, Restrictions and Easements for CrossTimbers at Steamboat, a Colorado Common Interest Community ("Original Declaration"), which Original Declaration establishes twelve (12) townhouse units, common area and expansion property as shown and described on the Plat of CrossTimbers at Steamboat, Filing No. 1, File No. 12613 of the Routt County records ("Filing 1 Plat"). Pursuant to the provisions of the Act and Section 4.01 of the Original Declaration, Declarant desires to add certain real estate to the common interest community and to create units, common elements and limited common elements in the property added to the common interest community. Pursuant to Section 13.03 of the Original Declaration, Declarant is authorized under Article 4 of the Original Declaration to exercise Special Declarant Rights, including the development rights reserved in said Article 4, for the purpose of adding real estate to the common interest community and creating thereon units, common elements and limited common elements. Hereinafter, the Original Declaration, as amended by this Amendment, shall be referred to as the "Declaration").

**II.  
AMENDED DECLARATION**

**NOW, THEREFORE**, the property shown and described on the Plat of CrossTimbers at Steamboat, Filing No. 2 ("Filing 2 Plat"), excluding any part thereof labeled "Expansion Property" is hereby made subject to the Declaration and shall be held, sold and conveyed subject to the provisions of the Declaration and shall be referred to hereinafter as the "Filing 2 Property." The Filing 2 Property is hereby divided into seventeen (17) separate parcels designated as follows:

Unit 1, Bldg. 3  
Unit 2, Bldg. 3



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1 of 5 R 25.00 D 0.00 Routt County, CO

Unit 3, Bldg. 3  
Unit 4, Bldg. 3  
Unit 1, Bldg. 4  
Unit 2, Bldg. 4  
Unit 3, Bldg. 4  
Unit 4, Bldg. 4  
Unit 1, Bldg. 5  
Unit 2, Bldg. 5  
Unit 3, Bldg. 5  
Unit 4, Bldg. 5  
Unit 1, Bldg. 9  
Unit 2, Bldg. 9  
Unit 3, Bldg. 9  
Unit 4, Bldg. 9  
Common Area

Each of the parcels designated above by Unit number contains as of the date of this Declaration a townhouse unit located thereon. The Filing 2 Plat is filed for record in File No. 12786 of the Routt County records.

2. Notwithstanding anything set forth in the Declaration or elsewhere to the contrary, the term "Expansion Property" shall hereinafter be only the Expansion Property shown on the Filing 2 Plat.
3. Pursuant to paragraph 3.03, the allocated interests are recalculated as set forth in the exhibit attached hereto and labeled "Exhibit B," which shall supersede and substitute for the Exhibit labeled "Exhibit B" on the Original Declaration.
4. Except as otherwise set forth herein, capitalized terms shall have the same meaning as set forth in the Original Declaration.

**IN WITNESS WHEREOF**, Declarant has executed this Amendment to Declaration of Conditions, Covenants, Restrictions and Easements for CrossTimbers at Steamboat, a Colorado Common Interest Community



516510 09/10/1999 03:05P B762 P450 K Weinland  
2 of 3 R 25.00 D 0.00 Routt County, CO

CTSB, LLC, a Texas limited liability  
Company

By: *Stanley S. Beard*

Stanley S. Beard, Manager

STATE OF COLORADO )

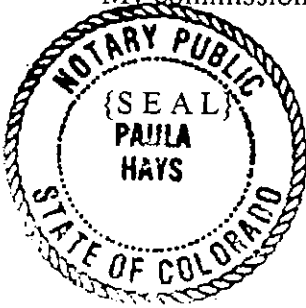
ss.

County of Routt )

The foregoing instrument was acknowledged before me this 3rd day of September,  
1999 by Stanley S. Beard as Manager of CTSB, LLC, a Texas limited liability company.

WITNESS my hand and official seal.

My commission expires: May 16, 2003



*Paula Hays*  
Notary Public

516510 09/10/1999 03:05P 8762 P450 K Weinland  
3 of 5 R 25.00 D 0.00 Routt County, CO



**EXHIBIT "B"**  
**ATTACHED TO THE DECLARATION OF CONDITIONS,  
 COVENANTS, RESTRICTIONS AND EASEMENTS FOR CROSSTIMBERS  
 AT STEAMBOAT, A COLORADO COMMON INTEREST COMMUNITY**

**UNIT DESIGNATIONS AND TABLE OF ALLOCATED INTERESTS  
 FOR CROSSTIMBERS AT STEAMBOAT, FILINGS NO. 1 AND 2**

<u>Unit Number</u>	<u>Number of Bedrooms</u>	<u>Vote in the Affairs of the Association</u>	<u>Allocated Interest</u>
Unit 1, Bldg. 1	4	1	3.9%
Unit 2, Bldg. 1	2	1	3.0%
Unit 3, Bldg. 1	2	1	3.0%
Unit 4, Bldg. 1	4	1	3.9%
Unit 1, Bldg. 2	3	1	3.5%
Unit 2, Bldg. 2	3	1	3.5%
Unit 3, Bldg. 2	3	1	3.5%
Unit 4, Bldg. 2	3	1	3.5%
Unit 1, Bldg. 3	4	1	3.9%
Unit 2, Bldg. 3	3	1	3.5%
Unit 3, Bldg. 3	3	1	3.5%
Unit 4, Bldg. 3	4	1	3.9%
Unit 1, Bldg. 4	3	1	3.5%
Unit 2, Bldg. 4	3	1	3.5%
Unit 3, Bldg. 4	3	1	3.5%
Unit 4, Bldg. 4	3	1	3.5%
Unit 1, Bldg. 5	4	1	3.9%
Unit 2, Bldg. 5	3	1	3.5%
Unit 3, Bldg. 5	3	1	3.5%
Unit 4, Bldg. 5	4	1	3.9%
Unit 1, Bldg. 9	4	1	3.9%
Unit 2, Bldg. 9	2	1	3.0%
Unit 3, Bldg. 9	2	1	3.0%
Unit 4, Bldg. 9	4	1	3.9%
Unit 1, Bldg. 10	4	1	3.9%
Unit 2, Bldg. 10	3	1	3.5%
Unit 3, Bldg. 10	3	1	3.5%
Unit 4, Bldg. 10	4	1	<u>3.9%</u>
			100%

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5 of 5 R 25.00 D 0.00 Routt County, CO

**SECOND AMENDMENT TO DECLARATION OF CONDITIONS,  
COVENANTS, RESTRICTIONS AND EASEMENTS FOR  
CROSSTIMBERS AT STEAMBOAT, A COLORADO COMMON  
INTEREST COMMUNITY**

(CROSSTIMBERS AT STEAMBOAT, FILING NO. 3)

**THIS AMENDMENT TO DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS** is made this \_\_\_\_\_ day of June, 2000 by CTSB, LLC, a Texas limited liability company authorized to do business in the State of Colorado ("Declarant"), whose address is 500 West Texas Avenue, Suite 705, Midland, Texas 79701.

**I.  
RECITALS:**

Declarant has heretofore, made, declared and filed a Declaration of Conditions, Covenants, Restrictions and Easements for CrossTimbers at Steamboat, a Colorado Common Interest Community and amendment thereto ("Declaration"), which Declaration establishes twenty-nine (29) townhouse units, common area and expansion property as shown and described on Filing No. 1 and Filing No. 2 of the Plat of CrossTimbers at Steamboat, Files No. 12613 and 12786 of the Routt County records. Pursuant to the provisions of the Act and Section 4.01 of the Declaration, Declarant desires to add certain real estate to the common interest community and to create units, common elements and limited common elements within the remaining Expansion Area shown on the Plat of CrossTimbers at Steamboat Filing No. 2. Pursuant to Section 13.03 of the Declaration, Declarant is authorized under Article 4 of the Declaration to exercise Special Declarant Rights, including the development rights reserved in said Article 4, for the purpose of adding real estate to the common interest community and creating thereon units, common elements and limited common elements. Hereinafter, the Declaration, as amended by this Amendment, shall continue to be referred to as the "Declaration").

**II.  
AMENDED DECLARATION**

**NOW, THEREFORE**, the property shown and described on the Plat of CrossTimbers at Steamboat, Filing No. 3 ("Filing 3 Plat") is hereby made subject to the Declaration and shall be held, sold and conveyed subject to the provisions of the Declaration and shall be referred to hereinafter as the "Filing 3 Property." The Filing 3 Property is hereby divided into eleven (11) separate parcels designated as follows:

Unit 1, Bldg. 6	Unit 2, Bldg. 7	Unit 1 Bldg. 8A	Unit 2, Bldg. 8B
Unit 2, Bldg. 6	Unit 3, Bldg. 7	Unit 2, Bldg. 8A	Unit 3, Bldg. 8B
Unit 3, Bldg. 7	Unit 4, Bldg. 7	Unit 1, Bldg. 8B	



529736 06/29/2000 02:51P Kay Weinland  
1 of 5 R 25.00 D 0.00 Routt County, CO

Each of the parcels designated above by Unit number contains as of the date of this Declaration a townhouse unit located thereon. The Filing 3 Plat is filed for record in File No. 12871 of the Routt County records.

2. Pursuant to paragraph 3.03, the allocated interests are recalculated as set forth in the exhibit attached hereto and labeled "Exhibit B," which shall supersede and substitute for the Exhibit labeled "Exhibit B" on the Declaration.
3. Except as otherwise set forth herein, capitalized terms shall have the same meaning as set forth in the Declaration.

IN WITNESS WHEREOF, Declarant has executed this Second Amendment to Declaration of Conditions, Covenants, Restrictions and Easements for CrossTimbers at Steamboat, a Colorado Common Interest Community

CTSB, LLC, a Texas limited liability  
Company

By: \_\_\_\_\_

Stanley S. Beard, Manager

STATE OF COLORADO )

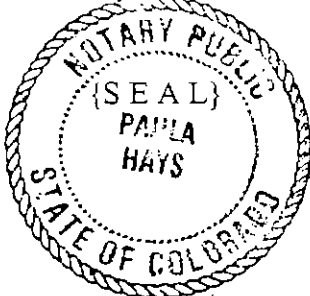
ss.

County of Routt )

The foregoing instrument was acknowledged before me this 20th day of June, 2000 by Stanley S. Beard as Manager of CTSB, LLC, a Texas limited liability company.

WITNESS my hand and official seal.

My commission expires: May 16, 2003



\_\_\_\_\_  
Paula Hays  
Notary Public

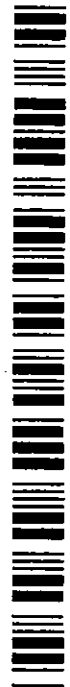


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2 of 5 R 25.00 D 0.00 Routt County, CO

**EXHIBIT "B"**  
**ATTACHED TO THE DECLARATION OF CONDITIONS,  
 COVENANTS, RESTRICTIONS AND EASEMENTS FOR CROSSTIMBERS  
 AT STEAMBOAT, A COLORADO COMMON INTEREST COMMUNITY**

**UNIT DESIGNATIONS AND TABLE OF ALLOCATED INTERESTS  
 FOR CROSSTIMBERS AT STEAMBOAT, FILINGS NO. 1, 2 AND 3**

<u>Unit Number</u>	<u>Number of Bedrooms</u>	<u>Vote in the Affairs of the Association</u>	<u>Allocated Interest</u>
Unit 1, Bldg. 1	4	1	2.7475%
Unit 2, Bldg. 1	2	1	2.1980%
Unit 3, Bldg. 1	2	1	2.1980%
Unit 4, Bldg. 1	4	1	2.7475%
Unit 1, Bldg. 2	3	1	2.4727%
Unit 2, Bldg. 2	3	1	2.4727%
Unit 3, Bldg. 2	3	1	2.4727%
Unit 4, Bldg. 2	3	1	2.4727%
Unit 1, Bldg. 3	4	1	2.7475%
Unit 2, Bldg. 3	3	1	2.4727%
Unit 3, Bldg. 3	3	1	2.4727%
Unit 4, Bldg. 3	4	1	2.7475%
Unit 1, Bldg. 4	3	1	2.4727%
Unit 2, Bldg. 4	3	1	2.4727%
Unit 3, Bldg. 4	3	1	2.4727%
Unit 4, Bldg. 4	3	1	2.4727%
Unit 1, Bldg. 5	4	1	2.7475%
Unit 2, Bldg. 5	3	1	2.4727%
Unit 3, Bldg. 5	3	1	2.4727%
Unit 4, Bldg. 5	4	1	2.7475%
Unit 1, Bldg. 6	4	1	2.7475%
Unit 2, Bldg. 6	4	1	2.7475%
Unit 1, Bldg. 7	4	1	2.7475%
Unit 2, Bldg. 7	2	1	2.1980%
Unit 3, Bldg. 7	2	1	2.1980%
Unit 4, Bldg. 7	4	1	2.7475%
Unit 1, Bldg. 8A	4	1	2.7475%
Unit 2, Bldg. 8A	4	1	2.7475%
Unit 1, Bldg. 8B	4	1	2.7475%
Unit 2, Bldg. 8B	4	1	2.7475%
Unit 3, Bldg. 8B	4	1	2.7475%



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 3 of 5 R 25.00 D 0.00 Routt County, CO

Unit 1, Bldg. 9	4	1	2.7475%
Unit 2, Bldg. 9	2	1	2.1980%
Unit 3, Bldg. 9	2	1	2.1980%
Unit 4, Bldg. 9	4	1	2.7475%
Unit 1, Bldg. 10	4	1	2.7475%
Unit 2, Bldg. 10	3	1	2.4727%
Unit 3, Bldg. 10	3	1	2.4727%
Unit 4, Bldg. 10	4	1	2.7475%
TOTAL			<u>100%</u>

### ALLOCATION FORMULA

$$100\% = (A \times X) + (B \times 0.9X) + (C \times 0.8X)$$

Where,

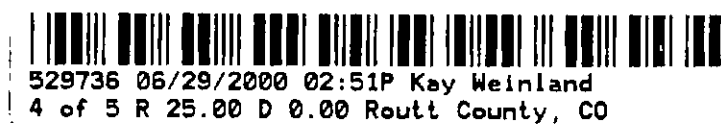
A = total number of 4 bedroom Units

B = total number of 3 bedroom Units

C = total number of 2 bedroom Units

X = Allocated Interest assessed to each 4-bedroom Unit

\* \* \* \* \*



CONSENT AND SUBORDINATION  
OF TRUST DEED BENEFICIARY

The undersigned, being the Beneficiary under those certain Trust Deeds encumbering the premises subject to this Amended Declaration, said Trust Deeds being recorded in Book 747, Page 822 and Book 757, Page 914, Routt County records, expressly consent to and join in the approval and execution hereof and subordinate the interest of the undersigned existing by virtue of the aforesaid Trust Deeds to this Amended Declaration.

VECTRA BANK COLORADO,  
STEAMBOAT SPRINGS

By: William L. Gibson

Name: William L. Gibson

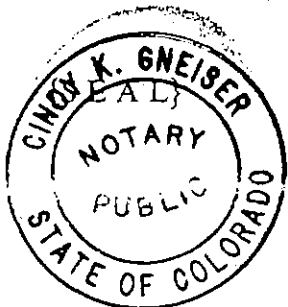
Title: Vice President

STATE OF COLORADO )

ss.

County of Routt )

The foregoing Consent and Subordination by Trust Deed Beneficiary was acknowledged before me this 19 day of June 2000 by William L. Gibson as Vice President of VECTRA BANK COLORADO, STEAMBOAT SPRINGS.



Cindy K. Gneiser  
Notary Public

My commission expires: 9/22/02



529736 06/29/2000 02:51P Kay Weinland  
5 of 5 R 25.00 D 0.00 Routt County, CO

WEISS AND VAN SCOYK, LLP  
ATTORNEYS AT LAW  
FIRST NATIONAL BANK BUILDING  
600 SO. LINCOLN, SUITE 202  
STEAMBOAT SPRINGS, COLORADO 80487

ROBERT G. WEISS  
WARD L. VAN SCOYK  
KARINA SERKIN SPITZLEY

-----  
OF COUNSEL  
GARY ENGLE

TELEPHONE: (970) 879-6033  
TELECOPIER: (970) 879-6038  
[bweiss@wvsc.com](mailto:bweiss@wvsc.com)

November 22, 2002

Ms. Alice Klauzer  
Mountain Resorts, Inc.

VIA FAX  
879-3228

Dear Alice:

You have asked me about responsibility for the staining of decks at the Cross Timbers project as between the Association and the unit owners. This letter replaces the letter I sent earlier today.

Section 7.02 clearly states that the Association is responsible for maintenance and repair of "decks" in addition to many other building features. Section 7.01 regarding maintenance of units says that it is the owner's responsibility to repair limited common elements, but not those which are the Association's responsibility under Section 7.02. Therefore, it is my opinion that it is the intent of Article 7 of the Declaration to give responsibility to the Association for maintenance of the decks, including staining. As I understand it, each deck serves a single unit. Accordingly, the Association is authorized under Section 7.03 to bill back the cost of staining the deck to the individual owner.

If you have any questions about any of the foregoing, please call me.

Very truly yours,

WEISS and VAN SCOYK, LLP

  
Robert G. Weiss

RGW/ph

*Article 7 of the Declaration*

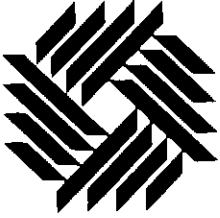
*Section 7.02*

*It is the responsibility of the Association  
for maintenance of the decks,  
including staining.*

*Section 7.03*

*The Association is authorized to bill  
back the cost of staining the deck  
to the individual owner.*





## MOUNTAIN RESORTS, LLC

2150 Resort Drive Suite 100 Steamboat Springs, Colorado 80487  
(970) 879-3700 Fax (970) 879-3228

# Memorandum

**To:** Susan Jackson  
Michael Packard  
Scott Abell  
Ron Tidmore  
Audrey Mandell

**From:** Michelle Dupree, Owner Representative

**Date:** 03/12/03

**Re:** Amendment of Declaration of Covenants for CrossTimbers

---

Please review the attached memorandum from Sally Claassen to Steve Fraiser in reference to the change in the CrossTimbers Declaration of Covenants.

It seems this is a bit more complicated than we had hoped.

Please advise.

*A Note from the desk of Michelle Dupree, Owner Representative*

*The Law Office of Sarah D. Claassen, P.C.*

200 LINCOLN AVENUE, SUITE 200  
P.O. BOX 4064 STEAMBOAT SPRINGS, COLORADO 80477  
PHONE (970) 879-8405 FACSIMILE (970) 879-8325

**FAX COVER SHEET**

FAX NUMBER TRANSMITTED TO: 879-~~9129~~ 3228

To: Steve Frasier  
Mountain Resorts LLC  
From: Sally Claassen  
Client/Matter: Cross Timbers  
Date: March 7, 2003

DOCUMENTS	NUMBER OF PAGES*
Memorandum re Declaration	2

COMMENTS:

\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT.

# M E M O R A N D U M

**To:** Steve Frasier  
Mountain Resorts  
**From:** Sally Claassen  
**Date:** March 6, 2003  
**Subject:** Amendment of Declaration of Covenants for Cross Timbers

The question presented is what is the procedure to amend the Declaration of Conditions, Covenants, Restrictions, and Easements for Cross Timbers at Steamboat, Colorado Common Interest Community with regard to Paragraph 12.2 "Parking." That paragraph presently states "The parking spaces located in the parking structure are reserved for visitor parking only, and may not be used by unit owners, even temporarily... The Association may establish and collect fines for violation of rules relating to parking, which fines shall be assessed against the Owner of the Unit who or whose occupant commits the violation."

Apparently, the Unit Owners now wish to use the parking spaces located in the parking structure and wish to delete the restriction contained in the Covenants.

Section 13.03 of the Covenants provides that they may be amended upon the written approval of 67% of the Owners and 67% of the First Lienors. This means that at least 67% of the Owners and the banks holding First Deeds of Trust on 67% of the Units must sign a document approving the amendment. This document must be prepared with the same formalities as the original Declaration meaning that it must specifically refer to the original Declaration, the correct recording information, etc., and all signatures must be notarized. **Amendments of the Declaration, with just a couple specific exceptions, cannot be accomplished simply by a vote at an Association meeting.**

However, the Association meeting is the place to start. The Board would raise the issue of the desirability of the amendment and take a vote on whether the Owners at the meeting are in favor of the proposed amendment. A careful head count of those approving the amendment should be taken because it may become important later in the process as will be explained below.

It would be wise and help move things along to have the amendment and signature pages for all Owners available at the meeting so that those Owners attending the meeting who are prepared to sign-off on the amendment can do so at that time. If the result of the meeting is that a healthy majority wishes to move forward with the amendment, then the amendment should be mailed to all the remaining Owners and their Deed of Trust holders. If by a

miracle (comparable to the parting of the Red Sea) you receive a 67% response of both the Owners and the Deed of Trust holders, the amendment with all the signature pages can be recorded and the amendment accomplished.

If however, you do not receive back the 67% approval, you need to do a second mailing in a further attempt.

If at that time you still fall short, the Colorado Common Interest Ownership Act (CCIOA) provides for a Court process to amend the Declaration. That statute requires that 1) the proposed amendment has been the subject of discussion of at least one Association meeting; 2) there must have been at least two attempts to obtain the required votes; and 3) at least 50% of the Owners must have approved the proposed amendment.

With regard to the latter, I do not read the statute to say that you need to have 50% of the signatures on the actual recordable amendment, but that 50% have approved it when it was raised for vote at the Association meeting.

If you can accomplish the first three items, then a petition is filed with the Court and the Court will set a hearing not less than 45 and not more than 60 days from the Petition. The Court will go ahead and order the amendment at the hearing date, unless at least 33% of the Owners have filed an objection to the amendment.

Having said all this, you can see that it is potentially an expensive and cumbersome process to amend the Declarations, and I'm not sure that this process is worth it for the particular amendment at issue. Referring back to the language, I note that although there is a restriction on parking in the structure, the "so what" is that the Association may establish and collect fines for violation of rules relating to parking. Therefore, the present situation may best be solved by having the Association specifically provide that the fine for Unit Owner parking in the structure is zero dollars or 10 cents to the annual party fund until further action by the Association. If on the other hand, there are a couple of other issues within the Covenants which the ownership wishes to change, then it should be done at the same time for all the obvious economies.

I hope this has satisfactorily answered your question, if not, please do not hesitate to give me a call. Similarly, if the Association wishes to move forward with the proposed amendment and you would like me to draft it in the correct form, I would be happy to do so.