

**AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR  
FIRST WESTWIND AT VAIL CONDOMINIUMS**

Amended and Restated as of September 11, 2021

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**AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR  
FIRST WESTWIND AT VAIL CONDOMINIUMS**

This Amended and Restated Declaration is made effective as of September 11, 2021 upon recording.

**RECITALS:**

A. Northwestern National Life Insurance Company, a Minnesota corporation acting as Declarant, recorded that certain Condominium Declaration for First Westwind at Vail Condominiums on November 26, 1969 at Reception No. 112000 in Book 216 at Page 473, in the Office of the Clerk and Recorder for Eagle County, State of Colorado, as amended by that certain First Amendment to Condominium Declaration for First Westwind at Vail Condominiums (the “**First Amendment**”) recorded in the real property records of Eagle County, Colorado on April 1, 2010 at Reception No. 201006151 (collectively, together with the First Amendment, the “**Original Declaration**”), subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration.

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration by virtue of this Amended and Restated Condominium Declaration for First Westwind at Vail Condominiums (this “**Declaration**”), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto be superseded and replaced by this Declaration.

C. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a) and the First Amendment, approval of this Declaration requires the affirmative vote or agreement of at least 67% of the total “**Association**” (as hereinafter defined) votes.

D. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome.

E. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the “**Community**” (as hereinafter defined), remove developer/declarant “boilerplate” language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the Community or deal with Community concerns, remove provisions that do not comply with current Colorado law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial Colorado law provisions.

F. The purpose of the Association, as provided in the Original Declaration, is to preserve the value and desirability of the Community and the Units and to further the interests of the residents of the Community and members of the Association.

G. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), at least 67% of the total Association vote, have approved this Declaration.

### DECLARATION:

NOW, THEREFORE, the Original Declaration is replaced and amended and restated as follows:

### ARTICLE 1 DEFINED TERMS

#### Section 1.1 Defined Terms.

Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

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

(b) “**Allocated Interests**” shall mean the undivided interest in the Common Elements, the Common Expense liability and the votes in the Association.

(c) “**Animals**” shall mean and include cats, dogs, birds, reptiles or other household animals maintained as pets, as may be further defined in or supplemented by the Rules and Regulations.

(d) “**Assessment**” shall include all Common Expense Assessments, insurance Assessments, utility Assessments, Special Assessments, and any other expense or assessment levied upon a Unit pursuant to this Declaration or the Act, including interest, late fees, attorneys’ fees, fines, and costs.

(e) “**Association**” shall mean First Westwind at Vail Condominiums Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

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

(g) “**Common Elements**” shall mean the Property within the Community other than the Units, which portion of the Property may be designated on the Map and in this Declaration. Common Elements shall include Limited Common Elements. The Common Elements shall be owned, as tenants in common, by the Owners of the separate Units, each owner of a Unit having an undivided interest in the Common Elements.

(h) “**Common Expenses**” shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(i) “**Community**” shall mean the Community of First Westwind at Vail Condominiums, also known as the Westwind Condominiums and Westwind at Vail

Condominiums, which Community is a Condominium Community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

(j) “**Declaration**” shall mean and refer to this Amended and Restated Condominium Declaration for First Westwind at Vail Condominiums, as amended, recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

(k) “**First Mortgage**” shall mean a Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

(l) “**First Mortgagee**” shall mean a holder of a First Mortgage.

(m) “**Governing Documents**” shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, including Responsible Governance Policies, as they may be amended from time to time.

(n) “**Limited Common Elements**” shall mean those portions of the Common Elements, if any, which are limited to and reserved for the exclusive use of one or more, but fewer than all of the Owners. Any balconies or patios which are identified on the Map with the same number or other designation by which a Unit is identified shall be Limited Common Elements for the exclusive use of the Owner or Owners of the Unit bearing the same number or designation.

(o) “**Map**” shall mean the Condominium Map of First Westwind at Vail Condominiums recorded November 26, 1969 in Book 216 at Page 474, and filed as Reception No. 112001 in Map Case No. 2, Drawer W, of the Eagle County, Colorado real property records (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the floors and elevations, and all of the land and improvements thereon as the Map may be amended or supplemented from time to time, which Map is incorporated herein and made a part of this Declaration by reference. More than one plat, map or supplement thereto may be recorded, and, if so, then the term “Plat” or “Map” shall collectively mean and refer to all of such plats, maps and supplements thereto.

(p) “**Member**” shall mean any Owner. The terms “Member” and “Owner” may be used interchangeably.

(q) “**Mortgage**” shall mean any mortgage, deed of trust, or other document pledging any Unit or interest therein as security for payment of a bona fide debt or obligation.

(r) “**Mortgagee**” shall mean any person or entity named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person or entity under such Mortgage.

(s) “**Owner**” shall mean the owner of record title, whether one or more persons or entities to any Unit which is a part of the Property, including contract sellers, but



excluding those having such interest merely as security for the performance of an obligation.

(t)

(u) “**Parking Rules**” shall mean the parking rules and regulations promulgated under this Declaration and any other parking policies, procedures and regulations then in effect that are adopted by the Association.

(v) “**Property**” shall mean the property described in the Original Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

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

(x) “**Unit**” shall mean a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

## **ARTICLE 2 NAMES/DESCRIPTION OF PROPERTY**

### **Section 2.1 Name and Type.**

The type of Common Interest Community is a condominium community. The name of the Community is “First Westwind at Vail Condominiums.” The name of the Association is “First Westwind at Vail Condominiums Association, Inc.” The Community was created as a pre-1992 Common Interest Community which has not, and does not now, elect under Section 118 of the Act to become fully subject to all of the provisions of the Act.

### **Section 2.2 Property; Unit Description.**

The Community is located in Eagle County, State of Colorado. The Property subject to this Declaration is described on Exhibit A of this Declaration, in the Original Declaration, in the Map, and/or as is consistent with the common plan and scheme for the creation and operation of the Community. The Community may be subject to easements or licenses granted pursuant to this Declaration, granted by authority reserved in any recorded document, or established in the Act. Every contract for the sale of a Unit and every other instrument affecting title to a Unit shall describe that Unit by the corresponding number shown on the Map with the appropriate reference to the Map and to this Declaration, as each appears in the Eagle County, Colorado real property records as follows:

Condominium Unit \_\_\_\_\_, First Westwind At Vail Condominiums, according to the Condominium Map appearing in the records of the County Clerk and Recorder of Eagle County, Colorado, as Reception No. 112001 in Map Case No. 2 Drawer W and in Book 216 at Page 474, and as defined and described in that Amended and Restated Condominium

Declaration for First Westwind At Vail Condominiums, appearing in such records at Reception No. \_\_\_\_\_.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Unit and all the limitations on such ownership as described in this Declaration.

### **Section 2.3 Utility, Map and Map Easements.**

Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat or the Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

### **Section 2.4 Easements for the Association and Owners.**

Each Unit shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors), and to each Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages. Non-emergency repairs shall be made only during regular business hours on business days after at least 24 hours' prior notice to the occupants of a Unit wherein repairs are to be made. The Association shall have an easement to enter a Unit to inspect for events which may be causing waste of water, heat or any other utility provided by the Association or paid as a part of Common Expenses. If the inspection reveals that the Owner has failed to maintain the Unit so as to prevent waste of common utility services provided for as a Common Expense, the Board shall follow the procedures provided for in this Declaration.

### **Section 2.5 Easement for Encroachments.**

If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit currently encroaches upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same, except for incidental encroachments that may occur as a result of shifting of soils or settlement of a Unit. If any part of a Unit subsequently encroaches upon the Common Elements or upon another Unit, that encroachment shall be subject to all available remedies of the Association, or as allowed under this Declaration, unless the encroachment has been reviewed and approved (as provided for in this Declaration). The easement shall extend for whatever period of time the encroachment exists. Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Unit. The actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such Unit indicated on the Map.

## **Section 2.6 Owners' Easements of Enjoyment.**

Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Elements and Limited Common Elements appurtenant to that Owner's Unit, and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Elements;
- (c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Elements;
- (d) the right of the Association to transfer or convey ownership of the Common Elements, or any portion thereof, subject to the prior affirmative approval of at least 67% of the total Association vote; provided that all Owners of Units to which any Limited Common Element is allocated shall approve of any transfer or conveyance of that Limited Common Element;
- (e) the right of the Association to suspend the voting rights of an Owner during any period of violation of any provision of the Governing Documents; provided, however, that suspension of voting shall be automatic during any period that an Owner is in default in the payment of any Common Expense Assessment;
- (f) the right of the Association to close portions of the Common Elements for maintenance, repair, replacement, and improvement; and
- (g) the right of the Association to change use of, add or remove improvements to the Common Elements.

## **Section 2.7 Delegation of Use.**

Owners may delegate their right of enjoyment to the Common Elements and facilities to Owner's family, tenants, invitees, lessees, and guests, subject to Rules and Regulations adopted by the Board of Directors. If the Owner delegates rights to use the Common Elements and facilities to tenants or contract purchasers who reside in the Unit, the Owner shall not be entitled to use the Common Elements and facilities. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the recreational amenities of the Community through Rules and Regulations and/or reasonable fees charged for such use.

## **Section 2.8 Disclaimer of Liability.**

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property

on, or in respect to the use and operation of, the Common Elements or any of their improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Elements, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof, and all users of, and visitors to, the Common Elements and their improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

## **ARTICLE 3 THE ASSOCIATION**

### **Section 3.1 Membership.**

Every person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Unit shall be entitled to cast votes according to the allocated interests section of this Declaration. Fractional and cumulative voting are prohibited.

### **Section 3.2 General Purposes and Powers of the Association.**

The Association, through its Board of Directors, shall perform functions and manage the Community as provided in the Recitals section of this Declaration. All Owners and any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

### **Section 3.3 Authority of the Association.**

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association as provided in the Bylaws of the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

### **Section 3.4 Management Company.**

The Association may employ or contract for the services of a management company in accordance with the terms set forth in the Bylaws.

### **Section 3.5 Allocated Interests.**

The ownership interest, Common Expense liability and votes in the Association allocated to each Unit are set as follows:

- (a) the percentage of ownership of the Common Elements, as set forth in Exhibit B of this Declaration;
- (b) the percentage of liability for Common Expenses and Special Assessments, as set forth in Exhibit B of this Declaration; and
- (c) the number of votes in the Association, as set forth in Exhibit B of this Declaration.

### **Section 3.6 Indemnification.**

To the full extent permitted by law, each officer, director or committee member of the Association and other volunteer appointed by the Board of Directors shall be indemnified by the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or other volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or other volunteer appointed by the Board of Directors at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and Colorado law.

### **Section 3.7 Security Disclaimer.**

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for such Owner and that Owner's tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect that Owner's person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

### **Section 3.8 Education and Training.**

As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing

Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

## **ARTICLE 4 UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

### **Section 4.1 Number of Units.**

The number of Units presently included in the Community is 35.

### **Section 4.2 Unit Boundaries.**

(a) Boundaries. The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(i) The unfinished interior surfaces of the perimeter walls. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the floors, walls and ceilings are part of the Common Elements. Where found on the walls and ceilings, the interior surfaces of built-in fireplaces with their flues in the closed position shall be boundaries of the Unit.

(ii) Unfinished interior surfaces of floors, or the lowermost floors, if it is a Unit containing more than one level;

(iii) Unfinished interior surfaces of ceilings, or the uppermost ceilings, if it is a Unit containing more than one level;

(iv) The windows and window frames, doors and door frames of the Unit.

Each Unit includes the spaces and improvements lying within the boundaries described above, including windows, window frames, doors and door frames, and as depicted on the Map.

### **Section 4.3 Licensing of Use of Common Elements.**

The Association, acting through the Board, may license use of parts of the Common Elements to Owners as determined by the Board on such terms and conditions as determined by the Board.

### **Section 4.4 Limited Common Elements.**

(a) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements.

(ii) Any balconies, patios, decks, steps, stoops, walkways, exterior doors, windows, fireplaces, or other fixtures designed to serve a single Unit, located either within or outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(b) The Association may modify Limited Common Elements without a membership vote, but only with consent of the Owner to whose Unit the Limited Common Element is appurtenant. The Association may also, without a membership vote, assign or reassign Limited Common Elements not previously assigned with the consent of the affected Owner(s) and the Association, provided that any such assignment or reassignment shall be made in accordance with the Act.

#### **Section 4.5 Mechanic's Liens.**

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

### **ARTICLE 5 MAINTENANCE AND SERVICE RESPONSIBILITIES**

#### **Section 5.1 Association Maintenance and Service Responsibilities.**

(a) Association Maintenance and Service. The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities. The Association shall maintain, repair, replace, and improve those items set forth on Exhibit C of this Declaration which are designated as the Association's responsibility.

(b) Maintenance of Common Elements by Owner. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or occupant which is the responsibility of the Association hereunder

(including, but not limited to, landscaping of Common Elements) shall be performed at the sole expense of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(c) Association Discretion. The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided, however, the Association shall provide Owners with 15 days' prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(d) Damage to Unit by Association. The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finish levels within individual Units can vary, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:

(1) for injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(2) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. In any determination by the Board of Directors finding they acted with due care, the Owner may appeal such determination to a third party having experience in adjusting insurance claims (the "**Appeal**"). Such determination by a third party in the Appeal shall be binding and the prevailing party shall be awarded their costs and fees incurred to participate in the Appeal process.



(ii) The Association shall not be liable to the Owner of any Unit or such Owner's occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

(iii) The Association shall not be liable to any Owner, or any Owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is caused by an act of God, is not foreseeable, or is not a natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

### **Section 5.2 Owner's Maintenance Responsibility.**

Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain, repair, replace, and improve all items set forth in Exhibit C of this Declaration which are designated as Owner responsibilities.

### **Section 5.3 Owner Responsibilities.**

Each Owner shall have the responsibility to:

(a) perform that Owner's maintenance responsibility in such manner so as not to unreasonably disturb other persons in Units;

(b) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(c) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, or that Owner's family, agents, contractors, tenants, guests, or licensees, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment;

(d) An Owner shall not be liable for injury or damage to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of that Owner's Unit or any Limited Common Element appurtenant thereto except if the Owner has failed to exercise due care in performing said maintenance. An Owner shall not be liable to any other Owner, or any Owner's occupant, guest or family or the Association for

any damage or injury caused in whole or in part by the Owner's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Owner's failure to discharge its responsibilities.

(e) Each Owner shall have the responsibility to perform that Owner's maintenance responsibility in such manner so as not to unreasonably disturb or put at risk other persons in Units, other Units or the Common Elements.

#### **Section 5.4 Window Replacement.**

Notwithstanding the responsibility of the Owners for windows, as part of a building renovation project, the Association may replace all Unit windows in the Community, subject to the prior affirmative approval of at least 67% of the total Association vote. Any expense associated with such window replacement shall be a Common Expense of the Association allocated among the Units based on the number of windows in each Unit replaced and the cost of such replacement.

#### **Section 5.5 Mold.**

Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Unit, and the Common Elements, including, but not limited to, appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Unit; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; and (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Each Owner shall be responsible for any damage to that Owner's Unit and personal property, to any other Unit or the Common Elements, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this Section. Each Owner shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within that Owner's Unit, to any other Unit or to the Common Elements if the Owner fails to meet the requirements of this Section.

#### **Section 5.6 Inspection, Repair and Replacement of Designated Owner Maintenance Components.**

The Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of designated Owner maintenance components as may be set forth in the Rules and Regulations, including but not limited to, water heaters, baseboard heaters, water shutoff valves, fireplace flues, and fireboxes (i.e. fireplace liner and brick). If, in the Board of Directors' sole discretion, the component needs to be maintained, repaired or replaced, the Association may provide such maintenance, repair or replacement (even though such component may be the Owner's responsibility) and the cost of such periodic inspection, maintenance, repair or replacement may be assessed against the Owner of the Unit served by such component pursuant to the following Section of this Declaration.

## **Section 5.7 Failure to Maintain.**

If the Association determines that any Owner has failed or refused to discharge properly that Owner's obligation with regard to the maintenance, repair, or replacement of items of which that Owner is responsible hereunder, then, except in the case of an emergency, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency exists, the Owner shall have 10 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that: (a) an emergency exists, or (b) that an Owner has not complied with the demand given by the Association as provided in this Section, then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which that Owner is subject, shall become and be a lien against that Owner's Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

If the Board determines that the need for maintenance or repair is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against that Owner's or occupant's Unit, shall become a lien against the subject Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

## **ARTICLE 6 COVENANT FOR ASSESSMENTS**

### **Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments, Special Assessments and Other Assessments.**

Each Owner, by acceptance of a deed for a Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance Assessments (assessed in proportion to risk), utility Assessments (assessed in proportion to usage), Special Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorneys' fees, fines and interest charged by the Association and additional fees charged by the managing agent, including, but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including, but not limited to, credit card convenience fees from whatever source, shall be the personal obligation of the Owner of such Unit at the time when the Assessment or other charges became or fell due. The annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorneys' fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the

Association shall not pass to a successor in title to a Unit unless expressly assumed by that successor in title. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Common Expense Assessments and Special Assessments shall be assessed against all Units in accordance with the formula for liability for the Common Expenses as set forth in this Declaration and as set forth on Exhibit B of this Declaration.

### **Section 6.2 Basis of Assessments.**

The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year as may be determined by the Board in its sole discretion. The Board shall send such budget to the Owners at least 30 days prior to its implementation.

### **Section 6.3 Annual Assessment.**

Common Expense Assessments shall be allocated among all Owners in proportion to their respective undivided interests in the Common Elements as set forth in Exhibit B-2 of this Declaration and shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors from time to time. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

### **Section 6.4 Special Assessments.**

In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4)(a) of the Act notwithstanding that this section of the Act does not apply to common interest communities formed prior to 1992. The proposed Special Assessment may be vetoed by votes of Owners representing a majority of the total Association votes. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Units that will be subject to the Special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Any amounts assessed pursuant hereto shall be assessed ratably among all Owners in proportion to their respective undivided interests in the Common Elements as set forth in Exhibit B-2 hereto. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

### **Section 6.5 Supplemental Assessments.**

The Association shall have the right to add to any Owner's Assessment as provided in this Article the following additional Supplemental Assessments:

(a) Those amounts expended by the Association for the benefit of any individual Unit or any occupant thereof, including but not limited to: Unit insurance; improvement, repair, replacement and maintenance specific to a Unit; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner or that Owner's agents, guests, licensees, invitees or lessees as set forth in this Declaration;

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

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

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

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

### **Section 6.6 Application of Payments.**

All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Unit shall be applied to payment of any and all legal fees and costs (including attorneys' fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner and that Owner's Unit.

### **Section 6.7 Effect of Non-Payment of Assessments.**

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

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

may, in its discretion, reverse the acceleration of the Member's annual Assessment for good cause as determined by the Board.

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

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, Mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant that Owner's Unit, the Board may take possession and rent that Owner's Unit or apply for the appointment of a receiver for the Unit without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a First Mortgage as set forth in such First Mortgage (including any assignment of rents), to the extent permitted under the Act.

#### **Section 6.8 Assignment of Rents.**

If a Unit is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Unit are more than 30 days delinquent, the Association may collect, and the occupant or lessee shall pay to the Board, the rent for any Unit owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Board's request. The Association shall send notice to the Owner by any reasonable means at least 10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Association's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Unit rental or a waiver of the Owner's obligations as provided in the Declaration. The Association shall not exercise this power where a receiver has been appointed with respect to a Unit or Owner, nor in derogation of the exercise of any rights to rents by a First Mortgagee of a Unit. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado

statutes, and the costs and attorneys' fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Unit in the same manner as any other Assessment under this Declaration.

### **Section 6.9 Lien Priority.**

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

## **ARTICLE 7 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances or is inconsistent with applicable law. Any such modification or waiver must be in writing.

### **Section 7.1 Use/Occupancy**

All Units within the Community shall be used only for those uses and/or purposes as allowed by local zoning, control and regulations. Occupancies may also be subject to any Rules and Regulations adopted by the Board. Except as provided in this Declaration, all Units shall be used for residential purposes only as residential dwellings. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community as a desirable residential Community, as reasonably determined by the Board, are prohibited unless approved in writing by the Association, or are specifically allowed by this Declaration or by Rules and Regulations adopted by the Board. Lease or rental of a Unit for lodging or residential purposes shall not be considered to be a violation of this covenant subject to any Rules and Regulations related thereto adopted by the Board.

### **Section 7.2 Use of Patios and Balconies**

Nothing shall be hung from or placed outside the Unit, including patios and balconies, unless allowed in the Rules and Regulations adopted by the Board.

### **Section 7.3 Restrictions on Animals.**

Animals may be kept in a Unit only by an Owner, provided that the Animal is not a nuisance to other residents. No Owner shall permit any tenant, guest, or other invitee of an Owner who resides in a Unit for thirty (30) days or longer, to keep or maintain an Animal within any portion of the Community, except in accordance with Rules and Regulations adopted by the Board from time to time, if any. No Animal shall be kept or maintained within any portion of the Community which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If an Animal is deemed a nuisance by the Association, the Owner having control of the Animal shall be given a written notice to correct the problem and if not corrected, that Owner will be required to remove the Animal from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Animals may not be kept for any commercial purposes. Animals are not permitted in the recreational areas. When on or within the Common Elements, Animals must be on a leash or other reasonably equivalent restraint device and under control. Feces left by Animals upon the Common Elements or Limited Common Elements, must be removed promptly by the Animal's Owner or the person responsible for the Animal. Animals shall not be allowed to defecate or urinate on any patio or balcony in the Community. Owners shall hold the Association harmless from any claim resulting from any action of their Animals or the Animals of their tenants, guests or other invitees, whether or not permitted to be kept within any portion of the Community as described herein or in the Rules and Regulations.

### **Section 7.4 Antennae.**

"Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulation, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on the Unit or Limited Common Elements which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Unit or Limited Common Elements.



### **Section 7.5 Nuisances.**

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

### **Section 7.6 Compliance With Other Laws.**

No improper, offensive or unlawful use shall be permitted within the Community or any portion thereof All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

### **Section 7.7 Parking, Storage, and Repairs.**

(a) Parking upon the Common Elements and Limited Common Elements shall be regulated by the Association.

(b) Each Unit shall be permitted to use only one (1) parking space in the Association's parking garage while that Owner's Unit is occupied. All other parking spaces shall be used by the Owners or occupants for self-service parking purposes on a "first come, first served" basis while that Owner's Unit is occupied.

(c) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by the Rules and Regulations adopted by the Association.

(d) No motor vehicle may impede the safe and efficient use of streets within the Community by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway or streets or guest parking within the Community.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted in the Community, except as permitted by the Rules and Regulations adopted by the Board.

(f) Parking spaces and access driveways and aisles are restricted to use for access or as a parking space for vehicles.

(g) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(h) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72

hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed within the Community's lobby area stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months following such initial notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(i) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Unit or dwelling, is obstructing the flow of traffic, or is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(j) If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot. All towing and booting shall otherwise comply with all local ordinances and requirements, if any.

#### **Section 7.8 Use of Common Elements.**

Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Board granted in accordance with Rules and Regulations adopted by the Board. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Board granted in accordance with Rules and Regulations adopted by the Board.

#### **Section 7.9 No Annoying Lights, Sounds or Odors.**

No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Excessive odors from the smoking of marijuana shall be deemed offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Board granted in accordance with Rules and Regulations adopted by the Board.

#### **Section 7.10 Compliance with Insurance Requirements.**

Except as may be approved in writing by the Association, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

**Section 7.11 Restriction on Signs and Advertising Devices.**

(a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Unit except such sign or signs as may be approved in writing by the Association.

(b) Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations.

**Section 7.12 Restrictions on Clotheslines.**

Clotheslines are prohibited to be installed anywhere in the Community.

**Section 7.13 Outdoor Grills and Tanks.**

No outdoor grills of any type (either charcoal, wood or gas) and no tanks of any kind (either elevated or buried), shall be erected, placed or permitted in the Community without the prior written approval of the Board being granted, if at all, in accordance with Rules and Regulations adopted by the Board.

**Section 7.14 Outbuildings and Temporary Structures.**

No outbuilding, temporary structure or any other improvement or thing of any kind, including bird feeders and flags shall be permitted on the Common Elements or Limited Common Elements of the Community without the prior written approval of the Board being granted, if at all, in accordance with Rules and Regulations adopted by the Board.

**Section 7.15 Prohibition of Marijuana Distribution and Growing.**

No Owner or occupant of a Unit may utilize such Unit for the purpose of growing or distributing marijuana or medical marijuana. This prohibition may further be clarified by the Board of Directors through Rules and Regulations. Owners will be responsible for any damage resulting from a violation of this restriction, including but not limited to increased water and utility charges.

**Section 7.16 Prohibited Activities.**

No Owner or occupant of a Unit may engage in any activity or practice which, in the sole discretion of the Board, is considered a threat to the health and/or safety of other Owners and residents within the Community, including, but not limited to, hoarding, creating conditions conducive to indoor fires, allowing Units to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Units in the Community.

**Section 7.17 No Restrictions on Mortgaging of a Unit.**

There are no restrictions on the right of the Owners to Mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

**Section 7.18 Map Restrictions.**

The restrictions, if any, included on the Map for the Property are incorporated herein by this reference.

**Section 7.19 Rules and Regulations.**

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

**Section 7.20 Compliance with Governing Documents.**

Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

**Section 7.21 Use of the Words Westwind Condominiums, Westwind at Vail, and First Westwind at Vail Condominiums Association, Inc.**

No resident or Owner shall use the words Westwind Condominiums, Westwind at Vail, or First Westwind at Vail Condominiums Association, Inc., or the logo of the Community or Association, if any, or any derivative of any of the foregoing, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

**ARTICLE 8 MODIFICATIONS TO UNITS**

**Section 8.1 Alterations of Units or Limited Common Element Balconies Without a Change in Allocated Interests or Boundaries of a Unit.**

Owners shall have the right, with written approval from the Board granted in accordance with Rules and Regulations adopted by the Board and subject to the provisions of this Article, to make the following alterations to their Units or Limited Common Element balconies, patios and deck areas:

(a) Interiors. Each Owner has the right to make any improvements or alterations to the interior of that Owner's Unit as provided for in this Article.

(i) Decoration of Unit. The rights and restrictions in this Article shall not be construed to restrict an Owner's right to decorate that Owner's Unit as that Owner should so determine.

(ii) Nonstructural and Structural Interior Alterations. The rights and restrictions in this Article shall not be construed to restrict an Owner's right to move, remove, alter or change any interior, nonstructural wall or partition, or change the use and/or designation of any room within that Owner's Unit; provided, however, that such change shall not affect the structural integrity of the Community or mechanical or utility systems of the Community. No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Board in accordance with Rules and Regulations adopted by the Board.

(iii) Adjoining Units. Owners shall have the right to remove or alter any intervening partition between adjoining Units and from adjoining any part of an adjoining Unit or creating any apertures therein with the approval of the Board granted in accordance with Rules and Regulations adopted by the Board.

(b) Exteriors. Owners have the right to make improvements or alterations to the exterior Limited Common Element balcony, patio or deck area, as provided for in this Article with the prior written approval of the Board granted in accordance with Rules and Regulations adopted by the Board.

(c) Limitations. Rights of Owners under the prior provisions are limited by the following restrictions:

(i) General Restriction. The alterations and modifications cannot impair the structural integrity, electrical systems, mechanical systems, utilities, lessen the support of any portion of the Community, enclose a Limited Common Element as improved interior space or as a part of a Unit or violate any of the provisions of this Article.

(ii) Exterior Changes. No balcony, porch, garden or yard enclosure, awning, screen, sign, banner or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected, applied to, placed upon or attached to any Unit, or any part thereof or upon any Common Elements or Limited Common Elements without, in each instance, written approval of the Association.

(iii) Painting and Decals. No painting, attaching of decals or other decoration shall be done on any exterior part or surface of any Unit, or on the interior surface of any window without written approval of the Association.

(d) Application and Approval Requirements. All changes allowed for under the above authority may only be made by the Owners of those Units, as applicant, after application to and approval by the Board in accordance with Rules and Regulations adopted by the Board. The application and approval process shall include at least the following:

(i) Signatures. The signatures of all of the Owners of the Units that are proposed to have changes must be on the application;

(ii) Representations. The Owners must represent and warrant that the proposed modifications do not affect the structural integrity, electrical systems, mechanical systems, utilities, lessen the support of any portion of the Community or violate any of the provisions of this Article;

(iii) Contents of the Application. The application must contain at least the following:

(1) evidence sufficient to the Board that the applicant has complied with and/or will comply with all local rules and ordinances and that the proposed changes do not violate the terms of any document evidencing a security interest of a lender in any of the applicant's Units;

(2) all necessary and proper permits and approvals from the appropriate governmental authorities have been or will be obtained;

(3) proof that the contractor(s) of the Owner is/are licensed and adequately insured; and such other information as may be reasonably requested by the Association.

(iv) Agreement May Be Required. The Board may require the Owner's written agreement (in the form required by the Association) providing for the following:

(1) for the Owner to be responsible, now and/or in the future, for any structural deficiencies or problems, electrical deficiencies or problems, mechanical structural integrity, electrical systems, utility or mechanical deficiencies or problems or problems associated with a lessening of support of any portion of the Community, or for violations of any of the provisions of this Article, all as may reasonably be determined by the Association;

(2) for the Owner's agreement to be responsible for ongoing maintenance, repair, replacement and improvement of any or all of the proposed additions/modifications of the Owner. The Association may require Owners to be responsible for all or some of the maintenance, repair, replacement and improvement of the proposed modifications;

(3) for the Owner's payment of the fees and costs of the Association, together with a deposit against fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board, in advance of any billing for costs and expenses of the Association;

(4) for reasonable advance notice by the Owner for the work to be performed, from the Owner or from the Owner's contractor; and

(5) satisfaction of all conditions as may be reasonably imposed by the Board in accordance with Rules and Regulations adopted by the Board of Directors.

### **Section 8.2 Alterations of Units or Limited Common Element Balconies With a Requested Change in Allocated Interests or the Boundaries of a Unit.**

Subject to the provisions of this Article, and pursuant to the procedures described in Section 38-33.3-217 of the Act, the following changes may be made, after application to the Board by the Owners of those Units and written approval by the Board in accordance with Rules and Regulations adopted by the Board:

(a) Boundary Change. Boundaries between adjoining Units may not be changed except in the case of the combination of two or more adjoining Units into a single Unit with the approval of the Board.

(b) Conversion of Limited Common Element to Unit. Boundaries of a Unit, to include a former Limited Common Element balcony or deck on which an Owner has been approved to make alterations (as provided for in this Section of this Article), may be changed, as provided for in this Article and with approval of the Board.

(c) Application and Approval Requirements. The Owners of the affected Units, as the applicant, must submit an application to the Association, which must be approved by the Association before the Owner proceeds, including all of the criteria set forth above in Section 8.1 and the following additional items (if application process is used above) and must also enter into an agreement with the Association, including the items set forth above:

(i) Reallocations. The proposed reallocation of interests, if any, which may include a re-allocation of Common Expense liability, to account for an increase in size to the Unit or Units of the Owner, if sought by the applicant or required by the Association; and

(ii) Forms of Amendments. The proposed form of amendment to this Declaration, including the Map, as may be necessary to show the altered boundaries, and their dimensions and identification.

### **Section 8.3 Reply and Communication.**

The Association shall reply to all submittals of plans made in accordance with this Article in writing within 60 days after receipt. In the event the Association fails to take any action on submitted plans and specifications within 60 days after the Association has received the plans and specifications, approval shall be deemed denied but the Owner shall have a right of appeal to the Association as provided in this Declaration and in the Rules and Regulations. All communications

and submittals shall be addressed to the Association at such address as is the registered address for the Association as maintained with the office of the Colorado Secretary of State.

#### **Section 8.4 Maintenance Responsibilities.**

For all modifications made to a Unit by an Owner, whether made under the authority and with the approvals required by this Article, or whether made previously or without approvals required by this Article, the Owner shall be responsible for maintenance, repair and replacement of all modifications unless the Association expressly assumes any of those responsibilities in writing.

#### **Section 8.5 Fees and Costs.**

Owners shall be obligated to pay all fees and costs incurred by the Association, including the fees and costs of design, engineering and legal professionals, in reviewing and effectuating an Owner's application, whether by deposit, or subsequent invoice from the Association.

### **ARTICLE 9 INSURANCE/CONDEMNATION/OBSOLESCENCE**

#### **Section 9.1 Insurance to be Carried by the Association.**

The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

#### **Section 9.2 Association Hazard Insurance on the Units and Common Elements.**

(a) The Association shall obtain and maintain hazard insurance covering full replacement cost, loss, damage or destruction by fire or other casualty to the Units and the Common Elements and the other property of the Association designated as the Association's responsibility in Exhibit C of this Declaration.

(b) If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board: (1) an inflation guard endorsement, (2) a construction code endorsement, (3) a demolition cost endorsement, (4) a contingent liability from operation of building laws endorsement, and (5) an increased cost of construction endorsement.

(c) All blanket hazard insurance policies shall contain a standard non-contributory Mortgage clause in favor of each First Mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of First Mortgagees, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the County of Eagle County, State of Colorado.

(d) All insurance purchased by the Association pursuant to this Section shall run to the benefit of the Association, the Board of Directors, officers, all agents and



employees of the Association, the Owners, and their respective Mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear.

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

(f) The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner shall have the right to obtain additional coverage at that Owner's own expense.

### **Section 9.3 Owner Insurance Responsibilities.**

Unit Owners are specifically responsible for maintaining insurance which covers that Owner's Unit to the extent not covered by policies maintained by the Association for the property designated as the Association's responsibility in Exhibit C of this Declaration. Owners are also responsible for obtaining and maintaining general liability insurance for acts or omissions related to an Owner, or that Owner's agents, contractors, guests, licensees, invitees or lessees. The liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any insurance carried by Unit Owners. The policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Association. The Association's insurance coverage, as specified in this Declaration, and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

### **Section 9.4 Association Flood Insurance.**

The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

### **Section 9.5 Association Liability Insurance.**

The Association shall obtain a policy of public liability and property damage liability insurance covering the Common Elements, in such limits as the Board may determine from time to time, but not in any amount less than a combined single limit of \$1,000,000.00. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured.

### **Section 9.6 Association Fidelity Insurance.**

The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an

amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

**Section 9.7 Worker’s Compensation and Employer’s Liability Insurance.**

The Association may obtain worker’s compensation and employer’s liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

**Section 9.8 Directors’ and Officers’ Personal Liability Insurance.**

The Association shall obtain directors’ and officers’ personal liability insurance to protect the directors, officers, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting on behalf of the Association.

**Section 9.9 Other Association Insurance.**

The Association may obtain insurance against such other risks, as it shall deem appropriate with respect to the Association responsibilities and duties.

**Section 9.10 Miscellaneous Terms Governing Association Insurance.**

The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

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

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of that Owner’s household.

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

(d) All liability insurance shall include the Association, the Board, the Association’s manager or managing agent, if any, the officers of the Association, First Mortgagees, their successors and assigns and Owners as insureds.

(e) In no event shall any casualty insurance policy contain a co-insurance clause.

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

(g) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner, only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

(h) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

#### **Section 9.11 Insurance Premium.**

Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

#### **Section 9.12 Managing Agent Insurance.**

The Association's manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage. The Association may indemnify its managing agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

#### **Section 9.13 Annual Association Insurance Review.**

The Board shall review the insurance carried by and on behalf of the Association at least annually.

#### **Section 9.14 Adjustments by the Association.**

Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a First Mortgage. The Association shall hold any insurance proceeds in trust for the Association, Owners and First Mortgagees as their interests may appear. Proceeds must be distributed first for the repair or restoration of the damaged property. The Owners and First

Mortgagees are not entitled to receive payment of any portion of the proceeds. The Association may determine how a surplus of proceeds, if any, shall be utilized.

**Section 9.15 Responsibility for Payment of Deductible Amount.**

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

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is the liability of an Owner, or that Owner's family members, agents, contractors, guests, licensees, invitees or lessees as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration. Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 10 days of notification and shall be considered an Individual Assessment allocated directly to the Unit and shall be collected as provided in this Declaration.

(b) The Owner shall pay or absorb the deductible for any loss to the Unit that would be the responsibility of the Owner in the absence of insurance unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, in which case the negligent party shall be responsible for the deductible. If a negligent Owner fails to pay the deductible for damage to a Unit, the Association may, but shall not be obligated to seek payment of the deductible on behalf of the Owner suffering the loss from the negligent Owner as provided in this Declaration for the collection of Assessments.

**Section 9.16 Duty to Repair.**

Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

**Section 9.17 Condemnation and Hazard Insurance Allocations and Distributions.**

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

**Section 9.18 Insurance Assessments.**

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

### Section 9.19 Payment of Claims to Delinquent Owners.

Notwithstanding anything to the contrary in this Declaration, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of Assessments owed to the Association under this Declaration, then the Association may retain and apply such proceeds recovered to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

### Section 9.20 Obsolescence.

(a) Renewal and Reconstruction. Owners representing at least 67% of the total Association vote may agree that the Property is obsolete and adopt a plan for renewal and reconstruction.

(i) If a plan for renewal or reconstruction is adopted by the Owners as described above, notice of the adoption of such plan shall be sent to all Owners and recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner who does not desire to be a party to such plan for renewal or reconstruction may give written notice to the Association within 15 days after the date of the notice of the adoption of such plan that the objecting Owner's Unit shall be purchased by the Association for the fair market value thereof.

(ii) The Association shall then have 30 days from receipt of a notice from an Owner that such Owner does not desire to participate in the plan within which to cancel such plan. If such plan is not cancelled, the Unit of the requesting Owner shall be purchased according to the following procedures:

(1) If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within 30 days after such agreement;

(2) If the parties are unable to agree on the fair market value, the date when either party notifies the other that he, she or it is unable to agree with the other shall be the "**Commencement Date**" from which all periods of time mentioned hereafter shall be measured. Within 10 days following the Commencement Date, each party shall nominate an appraiser in writing (and give notice of such nomination to the other party). If either party fails to make such a nomination within 10 days of the Commencement Date, the appraiser nominated shall, within 5 days after default by the other party, appoint and associate with the nominated appraiser another appraiser. If the two designated or selected appraisers are unable to agree on the fair market value of the Unit, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser

previously appointed shall nominate two appraisers and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, if the Association can arrange such judicial participation in this process, and otherwise by the President of the Association, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within 10 days of the failure of the two appraisers to agree, which, in any event, shall not be later than 20 days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value or, in the case of their disagreement, such decision of the umpire shall be final and binding and a judgment based upon the decision rendered may be entered in any court having jurisdiction. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. Alternatively, in the event the purchase price so established is unacceptable to the Board of Directors, then the Association may cancel the plan or resubmit a revised plan, to include the purchase price established for the Unit of the Owner who does not desire to participate in the plan, to the Owners for approval; and

(3) Unless the plan is canceled or the Board determines to resubmit the plan for approval, the sale shall be consummated within 15 days after the final determination of fair market value as determined above, and the Association, as attorney-in-fact, shall disburse such proceeds to the Association, Owner(s) and lienholders, as their interests may appear.

(b) Sale of Property. Owners representing at least 67% of the total Association vote may agree that the Community is obsolete or that the Community has suffered a material casualty, and that the Community should be sold. In such instance, the Association shall send notice of the approval of such a sale to all Owners and record a notice executed by the Association's President and Secretary setting forth such fact and, upon recording of such notice, the Property shall be sold by the Association, as attorney-in-fact for all Owners, free and clear from the provisions contained in this Declaration. The sales proceeds shall be collected and apportioned between the Owners on the basis of each Owner's appurtenant interest in and to the Common Elements as specified in the Declaration, and the proceeds shall be paid into separate accounts, each account representing each Unit in the Community. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner. The Association, as attorney-in-fact, shall use and disburse the total amount of each separate account, without contribution from one account to another, to the Association, Owner(s) and lienholders, as their interests may appear.

## ARTICLE 10 DISPUTE RESOLUTION PROCEDURES

### Section 10.1 Alternate Dispute Resolution.

The Association (including its officers, directors and committee members), all Owners, and any other person or entity not otherwise subject to this Declaration who agrees to submit to this Article (a “**Bound Party**”) agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party hereby covenants and agrees to submit all claims, grievances, controversies or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the rules and regulations of the Association, the design or construction of any improvements on the Property, or otherwise relating to the Community (the “**Claims**”) to the dispute resolution procedures set forth in this Article, with the exception of the “**Exempt Claims**” described in this Article.

### Section 10.2 Exempt Claims.

The provisions of this Article shall not apply to, and the term “**Claims**” shall not include, any of the following: (a) the imposition and collection of Assessments or other charges levied under the Assessments section of this Declaration, including actions to foreclose assessment liens; (b) a suit by the Association to obtain injunctive relief; (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it; (e) claims of the Association; and (f) claims against a non-Bound Party.

### Section 10.3 Claim Resolution Procedures.

All Claims other than Exempt Claims shall be resolved using the following procedures in lieu of litigation:

(a) Any Bound Party having a Claim (“**Claimant**”) against any other Bound Party (“**Respondent**”), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the “**Notice**”), stating plainly and concisely (i) the nature of the Claim, including the date, time, location, persons involved, and Respondent’s role in the Claim, (ii) the basis of the Claim (i.e. the provisions of this Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Each Claimant and Respondent (the “**Parties**”) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(d) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or such other mediator upon which the Parties may agree.

(e) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons or entities not a Party to the foregoing proceedings.

(f) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation**"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(g) Each Party shall, within 10 days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("**Settlement Demand**") to the Respondent. The Respondent shall make a final written settlement offer ("**Settlement Offer**") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(h) Subject to subsection (i) below, if the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 20 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Colorado Uniform Arbitration Act, C.R.S. §13-22-201 *et seq.*, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings.

(i) If a Claim alleges that any improvements located on the Properties suffer from construction or design defects, the following additional requirements must be satisfied before such a Claim may be submitted to arbitration: (a) if the Claim relates to one or more Units, the written approval of the Owner of each such Unit and the First Mortgagee on each such residence shall be obtained; (b) if the Claim relates generally to improvements on the Common Areas, the written approval of at least 67% of all Owners must be obtained; and (c) if the Claim is to be pursued by the Association, the Association shall hold a meeting of the Members no sooner than 10 days following the Association providing a written statement to all Owners discussing the potential Claim. Such written statement must include at least the following information: (I) a statement of the Claim and the Respondent's response thereto, including any settlement offer; (II) an estimate of the



time and costs of pursuing such Claim, (III) the potential impact of the Claim on the marketability of the Units; and (IV) a statement advising the Owners of their duty to disclose the Claim or alleged defect to prospective purchasers of their Units. Such written statement shall also be sent to the Respondent at least 10 days before such meeting and the Respondent shall have the right to attend and make a presentation-at such meeting.

(j) This Article is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the “**Award**”) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(k) If the Claims are resolved through negotiation or mediation as provided above, each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorneys’ fees and mediation expenses, unless the Bound Parties otherwise agree. If the Claims are not resolved through negotiation or mediation as provided above and the Claims go to binding arbitration, the “**Prevailing Party**” shall receive as a part of its Award from the opposing Party(ies) all of its costs, including attorneys’ fees, costs for other representatives in resolving such Claim, and any expenses incurred as a result of the dispute resolution procedures of this Article.

(l) For purposes of subparagraph (k) above, if the Award is equal or more favorable to Claimant than Claimant’s Settlement Demand, the Claimant shall be deemed to be the Prevailing Party; if the Award is equal to or less favorable to Claimant than any Respondent’s Settlement Offer, such Respondent shall be deemed to be the Prevailing Party. If neither of the above apply, neither party shall be deemed a Prevailing Party and each shall bear its own costs and expenses, including attorneys’ fees.

(m) If the Parties agree to resolve any Claim through negotiation or mediation as set forth above, and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without need to comply with the provisions of this Article. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including without limitation, attorneys’ fees and costs.

## **ARTICLE 11 GENERAL PROVISIONS**

### **Section 11.1 Compliance and Enforcement.**

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

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

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

(ii) suspending the right to vote and the right to use Common Elements;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Unit and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

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

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

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

(c) In addition to any other enforcement rights, if an Owner fails to properly perform that Owner's maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Unit.

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

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in

that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

### **Section 11.2 Attorneys' Fees.**

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

### **Section 11.3 Severability.**

Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

### **Section 11.4 Term of Declaration.**

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

### **Section 11.5 Amendment of Declaration by Owners.**

Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least 67% of the total Association vote. Any such amendments shall be certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Eagle County, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

**Section 11.6 Captions.**

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

**Section 11.7 Interpretation.**

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

**Section 11.8 Singular Includes the Plural.**

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

**Section 11.9 Conflict of Provisions.**

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


**Section 11.10 Challenge to this Amendment.**

All challenges to the validity of this amendment must be made within one year after the date of recording of this document.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the undersigned, being the President and the Secretary of First Westwind at Vail Condominiums Association, Inc., hereby certify that pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), at least 67% of the total Association vote has approved this Declaration.

FIRST WESTWIND AT VAIL  
CONDOMINIUMS ASSOCIATION, INC.,  
a Colorado nonprofit corporation

By:   
William Markus, President

STATE OF Connecticut ]  
] ss.  
COUNTY OF Fairfield ]

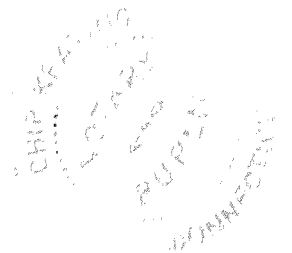
The foregoing Declaration was acknowledged before me this 21 day of April, 2022, by William Markus as President of FIRST WESTWIND AT VAIL CONDOMINIUMS ASSOCIATION, INC., a Colorado nonprofit corporation, on behalf of the corporation.

Witness my hand and official seal.

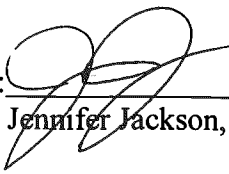
  
Notary Public

My Commission expires: 12/31/26

**CHIP KEATING**  
**NOTARY PUBLIC - CONNECTICUT**  
**MY COMM. EXPIRES 12/31/2026**



ATTEST:

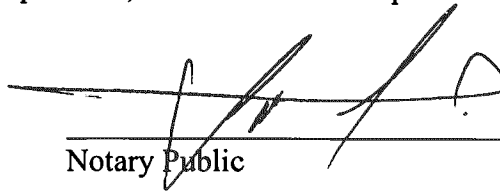
By:   
Jennifer Jackson, Secretary

STATE OF NEW YORK ]  
COUNTY OF NEW YORK ] ss.

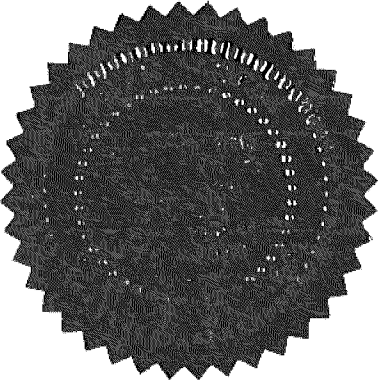
The foregoing Declaration was acknowledged before me this 25<sup>TH</sup> day of APRIL, 2022, by Jennifer Jackson as Secretary of FIRST WESTWIND AT VAIL CONDOMINIUMS ASSOCIATION, INC., a Colorado nonprofit corporation, on behalf of the corporation.

Witness my hand and official seal.

STEFAN DANCAK  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01DA6405218  
Qualified in New York County  
My Commission Expires March 2, 2024

  
Notary Public

My Commission expires: MARCH 2, 2024



**EXHIBIT "A"**  
**TO THE CONDOMINIUM DECLARATION FOR**  
**FIRST WESTWIND AT VAIL CONDOMINIUMS**

**DESCRIPTION OF PROPERTY**

A PART OF THE SOUTH ONE-HALF OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 80 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF THE SOUTHERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 70 FROM WHENCE THE SOUTHWEST CORNER OF SAID SECTION 6 BEARS S.70° 52' 19" W. A DISTANCE OF 1870.12 FEET; THENCE NORTHEASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 70 AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 3650.00 FEET, A CENTRAL ANGLE OF 02° 22' 27", AN ARC DISTANCE OF 151.25 FEET (THE CHORD OF SAID ARC BEARS N.78° 05' 43" E. A DISTANCE OF 151.23 FEET); THENCE S.04° 35' 58" E. A DISTANCE OF 255.67 FEET; THENCE S.85 ° 24' 02" W. A DISTANCE OF 150.00 FEET; THENCE N.04° 35' 58" W. A DISTANCE OF 236.44 FEET TO THE TRUE POINT OF BEGINNING; CONTAINING 36,988 SQUARE FEET OR 0.849 ACRES, MORE OR LESS; RESERVING THE NORTHERLY 30.00 FEET THEREOF FOR A UTILITY EASEMENT.

**EXHIBIT “B”  
TO THE CONDOMINIUM DECLARATION FOR  
FIRST WESTWIND AT VAIL CONDOMINIUMS**

**ALLOCATED INTERESTS**

- B-1: Percentage Interest in the Common Elements (see attached)
- B-2: Percentage Common Elements Expense Assessments (see attached)
- B-3: Voting Allocations (see attached)

{00371059 / 8 }



**EXHIBIT B-1**

**PERCENTAGE INTEREST IN THE COMMON ELEMENTS**

UNIT NUMBER	PERCENTAGE INTEREST
101	2.52015%
102	2.52015
103	1.83662
104	2.98416
105	4.25395
106	2.98416
107	2.52015
108	2.52015
109	1.97555
201	2.52015
202	2.52015
203	1.83662
204	2.98416
205	4.25395
206	2.98416
207	2.52015
208	2.52015
209	1.97555

{00371059 / 8 }

301	2.52015
302	2.52015
303	1.83662
304	2.98416
305	4.22895
306	2.98416
307	2.52015
308	2.52015
309	1.97555
401	1.97555
402	4.18171
403	1.97555
404	5.00694
405	5.00694
406	2.45901
407	4.18171
408	<u>2.89247</u>

100.00000%

{00371059 / 8 }

**EXHIBIT B-2**

**PERCENTAGE COMMON ELEMENTS EXPENSE ASSESSMENTS**

UNIT NUMBER	PERCENTAGE INTEREST
101	2.52015%
102	2.52015
103	1.83662
104	2.98416
105	4.25395
106	2.98416
107	2.52015
108	2.52015
109	1.97555
201	2.52015
202	2.52015
203	1.83662
204	2.98416
205	4.25395
206	2.98416
207	2.52015
208	2.52015

{00371059 / 8 }

209	1.97555
301	2.52015
302	2.52015
303	1.83662
304	2.98416
305	4.22895
306	2.98416
307	2.52015
308	2.52015
309	1.97555
401	1.97555
402	4.18171
403	1.97555
404	5.00694
405	5.00694
406	2.45901
407	4.18171
408	<u>2.89247</u>

100.00000%

{00371059 / 8 }

**EXHIBIT B-3**

**VOTING ALLOCATIONS**

UNIT NUMBER	PERCENTAGE INTEREST
101	2.52015%
102	2.52015
103	1.83662
104	2.98416
105	4.25395
106	2.98416
107	2.52015
108	2.52015
109	1.97555
201	2.52015
202	2.52015
203	1.83662
204	2.98416
205	4.25395
206	2.98416
207	2.52015
208	2.52015
209	1.97555

{00371059 / 8 }

301	2.52015
302	2.52015
303	1.83662
304	2.98416
305	4.22895
306	2.98416
307	2.52015
308	2.52015
309	1.97555
401	1.97555
402	4.18171
403	1.97555
404	5.00694
405	5.00694
406	2.45901
407	4.18171
408	<u>2.89247</u>

100.00000%

{00371059 / 8 }

{00371059 / 8 }

**EXHIBIT “C”  
TO THE CONDOMINIUM DECLARATION FOR  
FIRST WESTWIND AT VAIL CONDOMINIUMS**

**MAINTENANCE AND INSURANCE OBLIGATIONS**

“A” = Association obligation

“O” = Owner obligation

The term “maintenance” includes repair and replacement unless otherwise noted on the Chart. The Association shall be responsible, as a Common Expense, for all cost and expenses associated with capital improvements and repairs to Common Elements, including Limited Common Elements, except to the extent required due to the negligence or intentional acts of an Owner or its guests and invitees.

	<b>MAINTENANCE</b>	<b>INSURANCE</b>
<b>BUILDING EXTERIORS</b>		
Residence-structure, including foundation, columns, girders, beams and supports	A	A
Siding, sheathing, wrap, brick, trim, molding, and other exterior facade surfaces	A	A
Exterior stoops, steps, and concrete surfaces	A	A
Gutters and downspouts	A	A
Porches, patios, and balconies (except cleaning)	A	A
Porches, patios, and balconies - cleaning	O	A
Roof shingles and roof underlay	A	A
Shutters and awnings	A	A
Chimneys and chimney caps	A	A
Window screens	O	A
Interior glass surfaces--cleaning	O	A
Glass--repair and replacement	O	A
Window panes and frames--maintenance, repair, and replacement	A	A
Window panes and frames—painting and staining (interior only)	O	A



Window panes and frames—painting and staining (exterior only)	A	A
Window trim and caulking (exterior only)	A	A
Exterior unit doors and garage doors – painting and staining	A	A
Exterior unit doors including peep holes, doorknobs and lock mechanisms-- maintenance and repair	O	A
Storm doors	O	A
Balcony/patio sliding glass doors	O	A
Exterior light fixtures	O	O
<b>UTILITIES</b>		
Utilities <u>outside</u> Units and related to garage:  <ol style="list-style-type: none"> <li>1. Electrical and other wires</li> <li>2. Water and sewer pipes</li> <li>3. Cables</li> <li>4. Circuit boxes</li> <li>5. Water meters</li> <li>6. Circuit breakers</li> </ol>	A	A
Utilities <u>inside</u> Units and serving only that Unit:  <ol style="list-style-type: none"> <li>1. Furnaces</li> <li>2. Heating Equipment</li> <li>3. Thermostats</li> <li>4. Ducts</li> <li>5. Conduits</li> <li>6. Water pipes</li> <li>7. Electrical wiring</li> <li>8. Electrical outlets</li> <li>9. Telephone wiring</li> <li>10. Telephone outlets</li> <li>11. Light switches</li> <li>12. Hot water equipment</li> <li>13. Cable wiring</li> <li>14. Compressors</li> <li>15. Sump pumps</li> <li>16. Circuit breakers</li> </ol>	O	A

Utilities <u>inside</u> Units but servicing more than one Unit:  1. Furnaces 2. Heating Equipment 3. Thermostats 4. Ducts 5. Conduits 6. Water pipes 7. Electrical wiring 8. Electrical outlets 9. Telephone wiring 10. Telephone outlets 11. Light switches 12. Hot water equipment 13. Cable wiring 14. Compressors 15. Sump pumps 16. Circuit breakers 17. Boiler equipment (if any)	O	A
Air conditioners, including condensers and lines running from/to such equipment	O	A
<b>RESIDENCE INTERIORS</b>		
Furnishings, including all personal property such as furniture, electronics, jewelry, and clothing	O	O
Window coverings	O	O

<p>Permanent fixtures including but not limited to:</p> <ol style="list-style-type: none"> <li>1. Ceiling fans</li> <li>2. Hand rails</li> <li>3. cabinets</li> <li>4. countertops</li> <li>5. bathtubs and showers</li> <li>6. sinks</li> <li>7. toilets</li> </ol>	O	O
<p>Appliances including:</p> <p>Oven Range Refrigerator Dishwasher Washer/dryer Countertop microwave</p>	O	O
<p>Fireplaces (including façade, screen, chimney back, flue, and damper)</p>	O	A
<p>Interior <u>non-perimeter</u> walls, floors, and ceilings-including finished and unfinished surfaces, doors, drywalls, studs, insulation, hardware, and other material lying within such walls, floors and ceilings</p>	O	A
<p>Finished surfaces of <u>perimeter</u> walls and ceilings-including:</p> <p>Drywalls Paint Wallpaper Paneling Texture</p>	O	A
<p>Finished surfaces of <u>perimeter</u> floors including:</p> <ol style="list-style-type: none"> <li>1. tile</li> <li>2. vinyl</li> <li>3. hardwood</li> <li>4. carpeting</li> </ol>	O	A

Any components lying <u>between the perimeter drywalls and residence exterior</u> , including but not limited to:  1. insulation 2. girders 3. beams 4. pipes 5. wiring 6. plumbing	A	A
Subflooring	A	A
Party walls (walls dividing residences and shared by owners/residents on each side)	O	A
Crawl spaces	A	A
Garage interiors, including drywall or improvements herein	A	A
<b>GROUNDS</b>		
Retaining walls	A	A
Landscaping	A	A
Irrigation system and time clocks	A	A
Private roads, drives, and sidewalks	A	A
Driveways	A	A
Fences surrounding private patios	A	A
Private parking areas	A	A
Pool, Hot Tubs, Exercise Room	A	A
Monuments and signage	A	A
Perimeter fence	A	A
Storage sheds	A	A
<b>OTHER</b>		
Snow removal from driveways and sidewalks	A	A
Garbage pick-up	A	A
Common Elements existing in community and not otherwise listed	O	O
Any Owner installed exterior/interior improvement not otherwise listed	O	O