

**THIRD AMENDED AND RESTATED
CONDOMINIUM DECLARATION
FOR
VANTAGE POINT-VAIL CONDOMINIUMS**

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**THIRD AMENDED AND RESTATED CONDOMINIUM
DECLARATION
FOR
VANTAGE POINT – VAIL CONDOMINIUMS**

PREAMBLE

THIS DECLARATION is made as of this ___ day of _____, 2023, by Vantage Point – Vail Condominium Association, Inc., a Colorado nonprofit corporation ("Association").

Declarant, Joseph L. Levin, recorded that certain Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of Vantage Point-Vail on July 25, 1972 in Book 224 at Page 867 and at Reception No. 120624 ("Original Declaration") in the office of the Clerk and Recorder for Eagle County, State of Colorado (the "Official Records") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

The Original Declaration was amended and supplemented by that certain First Supplement to Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of Vantage Point-Vail Condominiums recorded in Book 229 at Page 253 of the Official Records (the "First Supplement");

The Original Declaration and the First Supplement were then amended and restated by that certain Amended Condominium Declaration for Vantage Point-Vail Condominiums recorded August 22, 1975 in Book 241 at Page 420 of the Official Records (the "Amended Declaration"). The Original Declaration and the First Supplement as amended and restated is referred to subsequently in this Declaration as the "Amended Declaration";

The Amended Declaration was then amended and restated by that certain Second Amended and Restated Condominium Declaration for Vantage Point-Vail Condominiums recorded April 29, 2004 at Reception No. 875571 of the Official Records (the "Second Amended Declaration").

The Owners and the Association desire to amend and restate all provisions of the Second Amended Declaration in their entirety pursuant to this Third Amended and Restated Condominium Declaration for Vantage Point – 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upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto be superseded and replaced in their entirety by this Declaration.

Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a) and the Second Amended Declaration, at least 67% of all of the votes in the Association and 67% of Eligible Holders (as defined in the Second Amended Declaration) have approved this Declaration.

The purposes of the amendments in this Declaration are to confirm election of treatment under the Colorado Common Interest Ownership Act pursuant to the procedures set forth in C.R.S. §38-33.3-118, amend the Declaration to accommodate Colorado law, and to allow the Board to efficiently operate the community or deal with community concerns.

1. Name.

The name of the condominium is Vantage Point-Vail Condominiums.

2. Location and Property Description.

The Condominium is located in Eagle County, Colorado. The specific property which is subject to the Act is described on Exhibit "A."

3. Concepts and Definitions.

(a) Defined Terms. Generally, the terms used in the Condominium Instruments, as defined below, shall have their common, generally accepted meanings unless otherwise specifically defined in this Declaration, the Act, the Articles, or the Bylaws. Unless the context otherwise requires, the following capitalized terms used in the Condominium Instruments shall be defined as follows:

Annual Assessments: Assessments levied on all Units subject to assessment to fund Common Expenses for the general benefit of all Units, as determined in accordance with Paragraph 10.

Articles: The Articles of Incorporation of Vantage Point – Vail Condominium Association, Inc., which have been duly filed with the Colorado Secretary of State, as may be amended from time to time.

Association: Vantage Point – Vail Condominium Association, Inc., a Colorado nonprofit corporation, and any successor or assign as the corporate entity responsible for the operation of the Condominium pursuant to this Declaration and the Act.

Bylaws: The Second Amended and Restated Bylaws of Vantage Point – Vail Condominium

Association, Inc. adopted contemporaneously herewith, as may be amended from time to time.

Board: The Association's board of directors and the body responsible for the general governance and administration of the Association.

Common Elements: That area and property within the Condominium which is not included within the boundaries of the Units, including any "Limited Common Elements" assigned to the Condominium under this Declaration. Without limiting the generality of the foregoing, any improvements located within the Condominium that are not shown on the Map as either a Unit or Limited Common Element, shall be a general Common Element. Without limiting the generality of the preceding sentence, the improvements located adjacent to Units 104, 105, and 106 not depicted on the Map shall be deemed to be general Common Elements.

Common Expenses: The expenses which the Association incurs in exercising its powers and performing its responsibilities under the Condominium Instruments, including allocations to reserve funds for such purposes and such other expenses as may be designated as Common Expenses pursuant to the Act and the Condominium Instruments.

Community-Wide Standard: The standard of appearance and of conduct, maintenance, or other activity generally prevailing within the Condominium, or the minimum standards established by or pursuant to the Condominium Instruments, whichever is the higher standard. The Association shall establish such standards, which may contain both objective and subjective elements. The Community-Wide Standard may evolve as the needs and desires of the Condominium and the Owners change.

Condominium: All of the real property and improvements subject to the provisions of the Act.

Condominium Instruments: This Declaration, the Articles, the Bylaws, Association rules, and the Map, as they each may be amended or supplemented from time to time.

Declaration: This Third Amended and Re-stated Declaration of Vantage Point – Vail Condominiums, as recorded and as may be amended or supplemented from time to time.

Interval Declaration: That certain Declaration of Protective Covenants and Interval Ownership Agreement for Vantage Point – Vail Condominiums, recorded February 24, 1975 in Book 238 at Page 744 of the Official Records, as amended and supplemented.

Interval Owners Association: That certain association established by the Interval Declaration.

Interval Owner: The record titleholder of an interval ownership of an Interval Unit, but not including any Mortgagee. If an Interval Unit is owned by more than one Person, the term "Interval Owner" shall refer to all such co-Interval Owners collectively, who shall be jointly and severally responsible for the obligations of an Owner as relates to that Interval Unit and shall share the rights of an Owner as relates to that Interval Unit under the Condominium Instruments, the Interval Declaration and the Act.

Interval Unit: A Unit subject to the Interval Declaration including Units 116, 211, 215, 305, 309, 310, 312, 409, 604.

Limited Common Elements: A portion of the Common Elements reserved for the exclusive

or primary use of one or more, but less than all, of the Units, as described in Paragraph 5.

Map: The Condominium Map of Vantage Point – Vail Condominiums recorded February 23, 1973 at Book 227 at Page 891 and Supplement to the Condominium Map of Vantage Point – Vail Condominiums recorded November 27, 1974 at Book 237 at Page 609.

Mortgage: Any institutional mortgage, deed to secure debt, deed of trust, or other transfer or conveyance of any interest in a Unit for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

Mortgagee: The holder of any Mortgage.

Occupant: Any Person occupying all or any portion of a Unit for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

Owner: The record titleholder of a Unit, but not including any Mortgagee. If a Unit is owned by more than one Person, the term "Owner" shall refer to all such co-Owners collectively, who shall be jointly and severally responsible for the obligations of an Owner and shall share the rights of an Owner under the Condominium Instruments and the Act. The term "Owner" shall include Interval Owners in all instances other than with respect to allocated interests for voting and Common Expenses for which separate allocations apply pursuant to this Declaration.

Person: Any individual, corporation, firm, limited liability company, trust, association, partnership, or other legal entity.

Special Assessments: Assessments levied in accordance with Paragraph 10(b)(ii).

Specific Assessments: Assessments levied against one or more but less than all Units for expenses incurred or to be incurred by the Association, as described in Paragraph 10(b)(iii).

Storage Closets: Any portion of the Condominium intended for separate, individual use for storage. Storage Closets may not be used for human habitation. Storage Closets are Common Elements but subject to the right of the Association acting through its Board to lease to Owners or others in accordance with the Condominium Instruments.

Unit: Any portion of the Condominium intended for separate, individual ownership and use for residential occupancy, the boundaries of which are described in Paragraph 4 and on the Map. Each Unit is depicted by its identifying number on the Map (identification of undivided interests of each Unit).

(b) Interpretation of Certain References.

Recording: All references in the Condominium Instruments to a "recorded" legal instrument, or to "recording" or the "recording" of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the Official Records, or such other place designated as the official location for filing documents affecting title to real estate in Eagle County in order to make them a matter of public record.

Consent or Approval: All references in the Condominium Instruments to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determinations: All references in the Condominium Instruments to

"discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Condominium Instruments, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Majority: All references in the Condominium Instruments to a "majority" shall refer to those eligible votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total number eligible to participate in the particular context.

Notice: Unless otherwise specifically provided, all references in the Condominium Instruments to "notice" shall refer to written notice by personal delivery, United States mail, or private carrier.

Notices shall be deemed to have been duly given and effective:

(i) if sent by United States mail, on the third day after being deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid; or

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery.

If to an Owner, notices delivered personally or by private carrier shall be sent to the address of the Owner's Unit or such other address which the Owner has designated in writing and filed with the Board. Notices to an Owner delivered by United States mail shall be to such address

which the Owner has designated in writing and filed with the Board.

If to the Association, the Board, or the Association's managing agent, notices shall be sent to the principal office of the Association or such other address as the Board may designate in writing to the Owners.

4. Units and Unit Boundaries.

(a) General. The Units are identified by identifying number on the Map. Each Unit consists of the space within the boundaries of the Unit as described in Paragraphs 4(b) and 4(c). Each Unit may be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments.

The ownership of each Unit shall include, and there shall pass with title to each Unit as an appurtenance thereto, whether or not separately described in the conveyance thereof, the undivided interest in the Common Elements attributable to such Unit as described in Paragraph 7 and as specifically identified in Exhibit "B" to this Declaration, together with membership in the Association and an undivided interest in the funds and assets of the Association.

Each Owner is entitled to exclusive possession of such Owner's Unit, together with an undivided interest in and right to use the Common Elements (other than Limited Common Elements) in common with others. Each Owner shall also have an exclusive or primary right to use any Limited Common Elements assigned to such Owner's Unit. Notwithstanding the above, the use of any Unit or any portion of the Common Elements, including the Limited Common Elements, is subject to this Declaration, and any rules promulgated by the Association pursuant to the Condominium Instruments.

(b) Boundaries of Units. The Units are depicted on the Map. Each Unit includes the air space and that part of the structure which lies within the following boundaries:

(i) Horizontal (Upper and Lower) Boundaries:

(A) The upper horizontal boundary of each Unit is the horizontal plane formed by the unfinished surface of the concrete, wood framing or other material comprising the permanent ceiling (not including any dropped soffit areas) to which the wallboard is attached in the uppermost story of the Unit.

(B) The lower horizontal boundary of each Unit is the horizontal plane formed by the uppermost surface of the concrete or other subflooring material forming the floor of the lowermost story of the Unit. Any decorative or finish flooring over such subflooring material shall be within the boundaries of the Unit.

The upper and lower horizontal boundaries of each Unit extend to their intersections with the Unit's vertical boundaries, as described below.

(ii) Vertical (Parametric or Lateral) Boundaries: The vertical or perimeter boundaries of each Unit are the planes between the wall studs and the outermost unexposed surface of the wallboard or other material comprising the interior surface of the perimeter walls of the Unit as shown on the Map.

The vertical boundaries of the Unit shall extend to their intersections with each other and to their intersections with the upper and lower horizontal boundaries of the Unit, as described above.

Except where provisions of this Declaration otherwise specify, all air spaces, interior walls and partitions, floors separating different stories

of the same Unit, and other fixtures and improvements within the foregoing boundaries are a part of the Unit. In addition, all windows, window coverings, shutters, awnings, door steps, door frames, stoops, doors, lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, carpet and any other materials constituting any part of the finished surfaces of a Unit's floors, walls, or ceilings shall be deemed to be within the boundaries of the Unit. The Unit shall also include any fireplace or stove hearth, facing brick, tile or fire box and fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors, including, without limitation, that portion of the plumbing and mechanical systems exclusively serving the individual Unit; provided, however, that a Unit shall not include any of the structural components of the building or utility or service lines located within the individual Unit which serve more than one Unit.

Notwithstanding the description of the boundaries set forth above, a Unit shall be deemed to include all portions of the plumbing, heating, electrical and natural gas systems (including furnaces, components, pipes, wires, conduits, ducts, and the like) serving only that Unit, even if located outside the boundaries of the Unit. The Common Elements shall be deemed to include any portion of the plumbing, heating, electrical and natural gas systems (including furnaces, components, pipes, wires, conduits, ducts, and the like) serving more than one Unit, even if located within the boundaries of a Unit.

In interpreting deeds, plats, and floor plans, the existing physical boundaries of a Unit as originally constructed, or as reconstructed in substantial accordance with the Map, shall be conclusively presumed to be its boundaries regardless of minor variances between the actual boundaries

and the boundaries shown on the Map or described in a deed.

(c) *Easement of Support.* Every portion of a Unit contributing to the support of another Unit or the Common Elements shall be burdened with an easement of support for the benefit of such other Unit(s) and the Common Elements.

(d) *Subdivision of Units.* No Unit may be subdivided into two or more Units.

(e) *Combining Units.* If two or more adjoining Units are owned by the same Owner, with the Board's written prior approval, the Owner shall have the right to remove all or any part of any intervening partition or create doorways or other apertures in such partitions, notwithstanding the fact that the partition may in whole or in part be a Common Element, so long as (i) no portion of any bearing wall or bearing column is materially weakened or removed, and (ii) no portion of any Common Elements, other than the affected partition, and other than any chutes, flues, ducts, conduits, wires, or other apparatus contained in the partition which must be relocated by the Owner if they serve any other part of the Condominium, is damaged, destroyed, or endangered. Alterations permitted by this subparagraph shall not be deemed a relocation of Unit boundaries. Notwithstanding anything to the contrary in this subparagraph, the Board shall have the authority to adopt rules and regulations which include additional requirements or considerations for combining Units.

The Owner of the affected Units shall pay all costs, including costs the Association incurs, in connection with combining the Units. Any Units so combined shall continue to be treated as separate Units for purposes of voting and liability for assessments.

5. Limited Common Elements; Assignment and Reassignment.

(a) Assignment. The Limited Common Elements and the Unit(s) to which they are assigned are as follows:

(i) any balcony, porch, courtyard, or patio, including any railing installed around the perimeter of such areas, designed to serve a single Unit, that is designated on the Map as "Limited Common Element" or "LCE" is assigned as the Limited Common Element of the Unit so served;

(ii) the portion of the Common Elements on which there is located any portion of the heating system exclusively serving a particular Unit is assigned as a Limited Common Element of the Unit so served;

(iii) any utility meter or sub-meter which serves only one Unit is assigned as a Limited Common Element of the Unit so served;

(iv) the hallway on each floor containing Units, which hallway provides direct access to one or more Units, that is designated on the Map as "Limited Common Element" or "LCE" is assigned as a Limited Common Element of the Unit(s) on such floor which are directly accessible from such hallway;

(v) any physical portion of the Condominium that is designated on the Map as "Limited Common Element" or "LCE."

(b) Reassignment of Limited Common Elements. Any Limited Common Element may be reassigned upon written application to the Association signed by the Owners of the Unit(s) to which the Limited Common Element is assigned and the Owner(s) of the Unit(s) to which it is proposed to be reassigned (the "affected Own-

ers") and the approval of the Board. The affected Owners shall be responsible for paying all reasonable costs associated with preparation of the instruments necessary to accomplish such reassignment.

Within 45 days following its receipt of such application, if the Board approves such application, the Association shall prepare or cause to be prepared any instruments that are necessary to reflect the reassignment of all rights and obligations with respect to the Limited Common Element involved. The affected Owners shall execute such instruments and, upon payment to the Association of all reasonable costs for the preparation and recordation thereof, the Association shall cause it to be placed in the Association's records.

In addition to the above, the Board may relocate, or reassign any previously assigned Limited Common Element if reasonably necessary to accommodate disabled individuals, the construction of improvements within the Condominium, the reconfiguration of the Common Elements, or for any other reason. Any such relocation or reassignment shall not require the approval of the affected Owner(s); provided, the Board shall use reasonable efforts to relocate or reassign a Limited Common Element to a reasonably comparable space within the Condominium. The relocation or reassignment of a Limited Common Element pursuant to this authority may result in the conversion of a portion of the Common Elements into a Limited Common Element without the approval of the membership.

(c) No Membership Approval. Any assignment or reassignment of a Limited Common Element in the manner provided in this Paragraph shall not require a vote under Paragraph 18.

6. Common Elements.

(a) *Description.* The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit, including the Limited Common Elements and such other areas, items, improvements, or fixtures that are specifically identified in this Declaration and the Map as Common Elements assigned to the Condominium. Storage Closets, storage spaces, balconies which are general Common Elements, parking garages and ski lockers are Common Elements but are fully subject to the right of the Association, acting through the Board, to lease to Owners or others and to retain rents received as part of the Association's general operating revenues.

(b) *Use of the Common Elements.* Each Owner and Occupant shall have an undivided interest in and right of use and enjoyment in and to the Common Elements (including the right of access, ingress, and egress to and from the Unit over those portions of the Condominium designated for such purpose), subject to: (i) the rights of Owners to the exclusive use of Limited Common Elements assigned to their respective Units; (ii) the right of the Association to regulate and control the use and enjoyment of the Common Elements as provided in this Declaration and the Act, including the right of the Association, acting through the Board, to lease Storage Closets, storage spaces, balconies which are general Common Elements, and ski lockers to Owners and others as provided herein; and (iii) the use rights, if any, of other owners, occupants, and authorized users of property pursuant to this Declaration. Each Owner's undivided interest in and right of use and enjoyment of the Common Elements subject to the foregoing exceptions shall be appurtenant to and shall pass with the title to his, her or its Unit.

The Common Elements may be used only for the purposes for which they are intended. No use of the Common Elements shall unreasonably interfere with or encroach upon the lawful rights of the other Unit Owners.

(c) *Control of Common Elements.* The Association, acting through the Board, may make and enforce reasonable rules regulating the use of the Common Elements, including the Limited Common Elements. In addition, the Association shall have the right to impose and receive payments, fees, or charges for the exclusive use or rental of any portion of the Common Elements, and to grant permits, licenses, and utility and other easements under, through, or over the Common Elements, as may be reasonably necessary to or desirable for the ongoing development, maintenance, equanimity and operation of the Condominium or adjacent property.

As set forth in Paragraph 5, the Board may convert portions of the Common Elements into Limited Common Elements.

The Association's rights under this subparagraph (c) are subject to the Association's right, authority, and obligation to operate, maintain, control, and regulate portions of the Common Elements in accordance with this Declaration.

7. Undivided Interest in Common Elements.

Each Unit is assigned an undivided interest in the Common Elements, as set forth in Exhibit "B." Such undivided interest in the Common Elements is calculated by dividing the Unit's square footage by the total square footage of all Units in the Condominium as set forth on the Map. Ownership of the Common Elements shall be by the Owners as tenants-in-common (except in the case of Limited Common Elements, subject to each Owner's right of use and enjoyment).

Except as otherwise permitted under the Act and the Condominium Instruments, the allocation of undivided interests in the Common Elements may be altered only by the consent of all Owners expressed in a duly recorded amendment to this Declaration.

Allocations and reallocations of the undivided interests are subject to minor variations attributable to rounding off. If any Units are added to or withdrawn from the Condominium, the undivided interests in the Common Elements for all Units within the Condominium after such addition or withdrawal shall be recalculated, and Exhibit "B" shall be revised in accordance therewith and expressed in a duly recorded amendment or supplement to this Declaration. Notwithstanding anything to the contrary herein, a recalculation of the undivided interests in the Common Elements resulting from the addition or withdrawal of Units from the Condominium shall not require the consent of Owners.

The undivided interest of each Owner in the Common Elements may not be separated from such Unit, and shall be deemed to be conveyed or encumbered or to otherwise pass with the title to the Unit whether or not expressly mentioned or described in a deed or other conveyance instrument describing the Unit. Any conveyance, encumbrance, or other transfer (voluntarily or involuntarily) of a Unit's undivided interest in the Common Elements independent of the Unit to which it is allocated shall be void.

The Common Elements shall remain undivided and no Owner or any other Person shall bring any action for judicial partition or division of the Common Elements, except as may be provided in the Act.

8. Association Membership and Allocation of Votes.

Each Owner, by virtue of ownership of a fee or undivided fee interest in any Unit, is a member of the Association. Each Owner of a Unit shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Condominium Instruments and the Act. Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to the percentage vote for each Unit owned as provided in Exhibit "B"; provided, there shall be only the total percentage vote per Unit as provided in Exhibit "B." Without limiting the generality of the foregoing, the Interval Owners shall cast their vote in accordance with the procedures set forth in the Interval Declaration and total percentage vote allocated to all Interval Units shall be submitted to the Association by the Interval Owners Association, and any attempt by an Interval Owner to vote separately shall invalidate the percentage vote allocated to that Interval Unit.

9. Allocation of Liability for Common Expenses.

Except as otherwise specifically provided in Paragraph 10 or elsewhere in the Condominium Instruments, each Unit is allocated liability for Common Expenses in accordance with its undivided interest set forth on Exhibit "B." Without limiting the generality of the foregoing, the liability for Common Expenses allocated to an Interval Unit shall be the joint and several obligation of all the Interval Owners of that Interval Unit.

10. Assessments and Assessment Lien.

(a) *Obligation for Assessments.* Each Owner and Interval Owner, by accepting a deed or entering into a recorded contract of sale for a Unit or an Interval Unit, is deemed to covenant

and agree to pay assessments as provided in Paragraph 9 and in this Paragraph 10. No Owner may exempt himself, herself or itself from liability for assessments for non-use of Common Elements, abandonment of his, her or its Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association, or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action required of it.

The Owner of each Unit and the Interval Owner of each Interval Unit shall be liable for assessments for its share of Common Expenses.

Assessments shall be paid in such manner and on such dates as the Board may establish. Unless otherwise provided, the Annual Assessments shall be paid in equal monthly installments due on the first day of each calendar month. Special Assessments may, in the discretion of the Board, be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

(b) Authority to Levy Assessments. The Association shall be authorized to levy three types of assessments: Annual Assessments, Special Assessments, and Specific Assessments.

(i) Annual Assessments. Except as otherwise permitted under the Act and provided in this Paragraph 10 or elsewhere in the Condominium Instruments, the Common Expenses shall be assessed as an Annual Assessment against all the Units and Interval Units in accordance with the undivided interest in the Common Elements assigned to each Unit and Interval Unit, as set forth in Exhibit "B."

Unless the Board otherwise determines in the exercise of its discretion, Association expenses relating to the maintenance, repair, and replacement of Limited Common Elements shall be a Common Expense allocated among all Units, including, Interval Units in accordance with each Unit's undivided interest. If the Board determines that its costs relating to the maintenance of any Limited Common Elements shall be assessed exclusively against those entitled to use or otherwise benefiting from the Limited Common Elements, such costs shall be shared among such Owners in the proportion that the respective undivided interests of each Unit, including Interval Units, bear to each other.

(ii) Special Assessments. If the Association incurs or expects to incur unbudgeted Common Expenses or the Annual Assessment otherwise proves inadequate for any year, the Board may, at any time, and in addition to any other rights it may have, levy a Special Assessment to cover the additional Common Expenses. Notice of any such Special Assessment shall be sent to the Owners of all Units, including Interval Units, against which such Special Assessment is made at least 30 days prior to the due date thereof.

(iii) Specific Assessments. The Association, in the Board's discretion, may levy Specific Assessments against particular Units, including Interval Units, as follows:

(A) Any Common Expenses benefiting fewer than all of the Units, or significantly disproportionately benefiting all Units, which may include expenses relating to the maintenance, repair, or replacement of the Limited Common Elements, but not including Common Expenses for periodic maintenance, repair, and replacement of any portion of the Common Elements or the Units for which the

Association is specifically responsible under this Declaration, may be assessed equitably among all of the Units which are benefited according to the benefit received, as the Board may reasonably determine; and

(B) Any Common Expenses occasioned by the negligence or misconduct of the Owner or Occupant of any Unit, or their guests, may be specially assessed against the Unit of such Owner or Occupant.

The Board's failure to exercise its authority in this regard shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority in the future with respect to any expenses.

For purposes of this subparagraph, non-use by an Owner of the Common Elements, any common facility, or any item which is budgeted as a Common Expense shall not constitute a benefit to fewer than all Units.

(c) Computation of Operating Budget and Annual Assessment. At least 60 days prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses to be incurred during the coming year. The budget shall include as separate line items, as applicable, an amount to be placed in a reserve account for capital repairs and replacements in accordance with a separate reserve budget adopted pursuant to Paragraph 10(d). The budget shall also take into account any surplus from prior years, to the extent not previously added to reserves, and any deficit from prior years. Unanticipated, non-recurring assessments and other charges need not be included in the Common Expense budget.

The Board shall cause the budget and notice of the Annual Assessment to be levied against each

Unit, including Interval Units, for the following year to be delivered to each Owner at least 30 days prior to the beginning of the Association's fiscal year for which such budget is to be effective. The notice shall announce the date set for a meeting of the Owners to consider such budget. The date of the meeting shall be not less than fourteen (14) or more than sixty (60) days after the date of mailing or other delivery of the summary of the budget.

Regardless of the presence or absence of a quorum at such meeting, the Common Expense budget shall automatically become effective unless vetoed at the meeting by Owners representing at least 75% of the total votes in the Association.

(d) Capital Budget and Reserve Contribution. The Board shall prepare, and thereafter review on an annual basis, a capital budget which shall take into account the number and nature of replaceable assets maintained by the Association as a Common Expense, the expected life of each asset, and the expected repair or replacement cost over the useful life of each asset.

The Board shall establish an amount to be contributed on an annual basis to reserve funds to permit meeting the projected capital needs of the Association over the period of the budget. The capital contribution required, if any, shall be included within the budget and assessments as provided in Paragraph 10(c). So long as the Board exercises business judgment in determining the amount of the reserve contribution in any year, the amount shall be considered adequate.

(e) Personal Liability; Lien to Secure Assessments. All assessments under this Paragraph 10, together with interest, late charges, costs, and reasonable attorneys' fees permissible under the Act and Colorado law, shall be the personal obligation of the Person who was the Own-

er of such Unit at the time the assessment or other charge became due and shall be a charge and continuing lien on the Unit against which each assessment or other charge is levied. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Assessments shall be paid in such manner and on such dates as the Board may establish.

(f) *Assessment Statement.* Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested.

The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that become due before the date of such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

(g) *Lien for Assessments.*

(i) In accordance with §38-33.3-316 of the Act, the Association shall have a statutory lien against each Unit to secure payment of

assessments, as well as interest, late charges (subject to the limitations of Colorado law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except as provided by law. Without limiting the generality of the foregoing, no more than six months of regular Common Expense assessments shall have priority over any first Mortgage lien.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(ii) The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien and shall be entitled its costs of collection (including attorneys' fees).

(h) *Delinquent Assessments.* All assessments and other charges not paid on or before

the due date shall be delinquent, and the Owner responsible for such payment shall be in default.

(i) Use and Consumption Fees. The Association may offer services or facilities for which it does not recover its costs through assessments under this Paragraph. The Board may charge use and consumption fees to any Person who chooses to use such Association services or facilities or participate in Association-sponsored activities. The Board may determine the amount and method of determining such fees.

11. Association Rights, Authority, and Responsibilities.

(a) Right of Entry. The Association shall have an irrevocable right of entry into each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of the Common Elements, including the Limited Common Elements, and of any portion of a Unit to be maintained by the Association pursuant to this Declaration, including but not limited to smoke detectors, carbon monoxide monitors, and fireplaces, and as necessary to prevent damage to the Common Elements or to a Unit or Units.

The right of entry shall include an easement in favor of the Association and its designees over the Units and the Limited Common Elements for the purpose of performing such pest control activities as the Association may deem necessary for the control, prevention, or eradication of insects, rodents, or other pests in the Condominium; for inspection of sprinkler systems; for correction of emergency conditions or casualties in the Units, the Common Elements, or the Limited Common Elements; and for verifying the performance by Owners of items of maintenance and repair for which they are responsible.

The Association shall also have the right to enter into Units for emergency, security, or safety

purposes, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties.

Except in an emergency, the Owner or Occupant of the Unit shall be given reasonable notice prior to any entry into the Unit under this subparagraph.

An Owner shall provide the Association with a key to the Owner's Unit and any security alarm code to enable the Association to gain access to the Unit for purposes described in this subparagraph. To the extent provided in Paragraph 11(j) below, directors and officers shall be insulated from liability and shall be entitled to indemnification by the Association in connection with action taken under this subparagraph.

(b) Rulemaking Authority. The Association, acting through the Board, may make and enforce reasonable rules regulating the use of the Condominium, including the Units, Limited Common Elements, and Common Elements.

Such rules shall be consistent with the provisions of this Declaration and the Act and shall be binding upon all Owners, Occupants, guests, and invitees until and unless overruled, canceled, or modified at an Association meeting by the vote, in person or by proxy, of Owners holding at least a majority of the total Association vote. Copies of all rules shall be available to all Owners.

(c) Enforcement. Subject to compliance with procedures required under the Act and in the Bylaws, the Association, acting through the Board, may enforce any provision of the Condominium Instruments, including any Association rule, by the imposition of reasonable monetary fines, by suit at law or in equity, or, in an appropriate situation, by self-help (including, but not

limited to, towing of vehicles parked in violation of parking rules), as permitted by the Act. The Association also may impose a fine against any Owner for violations of any of the Condominium Instruments, including Association rules, by any Occupant or guest of such Owner, as permitted by the Act. Nothing herein shall be construed as limiting any other legal or equitable means of enforcing the Condominium Instruments or Association rules.

In addition, the Association may enforce the Condominium Instruments by an action to recover sums due, for damages or injunctive relief, or by any other remedy available at law or in equity.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

The failure to take enforcement action in the case of a violation of any provision of the Condominium Instruments or Association rules shall not constitute a waiver of the right to enforce

subsequent violations of the same provision or rule thereafter. No liability shall be imposed on or incurred by the Association or the Board for failure to enforce any such violation. The prevailing party in any action at law or in equity instituted to enforce the provisions of the Condominium Instruments or Association rules shall be entitled to all costs incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

(d) *Contracts, Agreements, and Covenants.* The Association, acting through the Board, shall be authorized to enter into, renew, extend, modify, and terminate contracts, agreements, and covenants with third parties for maintenance, management, and operation of the Condominium or other property or facilities which benefit the Condominium and the Owners; for the provision of services to the Units and the Owners and Occupants; and for access to and use of facilities located outside of the Condominium.

(e) *Provision of Services.* The Association, acting through the Board, may enter into bulk contracts for the provision of services to the Units, including but not limited to, duly franchised cable and satellite television service, commonly metered utility services, pest control services, and other services which the Board determines to be in the interest of the membership, and to determine that the cost of such service shall be a Common Expense.

(f) *Concierge.* The Association shall have the authority, but not the obligation, to employ or otherwise engage a Person to act as a concierge for the benefit of the Owners, subject to the right of the Owners to terminate such service pursuant to this subparagraph. The Board shall determine, in its discretion, the hours of availability and scope of services to be provided by the

concierge and may adopt rules and regulations designed to ensure that the concierge is available to provide such services to all Owners and Occupants who may wish to make use of them. Owners that desire additional services may make a request for additional services to the Board. In addition to the Board's general right to terminate contracts, the Association shall terminate the concierge service, if any, upon the vote of Owners or their proxies entitled to cast a majority of the total Association vote, at a duly called and held meeting of the membership.

Expenses relating to concierge services may be Common Expenses assessed against all Owners as part of the Annual Assessment and/or the Association may charge fees for particular services only to Owners using such services.

(g) Use of Technology. In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Association may, as a Common Expense, provide for or offer services which make use of computers and other technological opportunities. For example, to the extent Colorado law permits, and unless otherwise specifically prohibited in the Condominium Instruments, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; send and collect assessments and other invoices electronically; create and maintain a community intranet or Internet home page offering interactive participation opportunities for users; maintain an "online" newsletter or bulletin board; and provide funding for any of the above purposes.

(h) Compliance with Governmental Requirements. The Association shall be responsible for ensuring the Condominium is in compliance with governmental requirements with re-

spect to the operation and maintenance of the Common Elements, including requirements imposed by the Town of Vail and Eagle County, their respective governmental or quasi-governmental subdivisions, any state and federal agencies, and similar entities of any kind.

(i) No Liability for Third Party Acts. OWNERS AND OCCUPANTS, AND THEIR RESPECTIVE GUESTS AND INVITEES, ARE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND FOR THEIR PROPERTY WITHIN THE CONDOMINIUM. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WHICH PROMOTE OR ENHANCE SAFETY OR SECURITY WITHIN THE CONDOMINIUM, INCLUDING, WITHOUT LIMITATION, MONITORING AND RESTRICTING ACCESS INTO ALL OR PORTIONS OF THE CONDOMINIUM. HOWEVER, THE ASSOCIATION, AND ITS CURRENT AND FORMER PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, AFFILIATES, AND COMMITTEE MEMBERS, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE CONDOMINIUM, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING FIRE PROTECTION, BURGLAR ALARM, OR OTHER MONITORING SYSTEMS, OR ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE CONDOMINIUM, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER

ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ITS TENANTS AND ALL OCCUPANTS OF ITS UNIT THAT THE ASSOCIATION AND ITS RESPECTIVE CURRENT AND FORMER PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, AND COMMITTEES, ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE CONDOMINIUM ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

(j) *Liability and Indemnification of Officers, Directors, and Committee Members.* The Association's current and former officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, nor for injury or damage caused in the performance of their duties, except for their own individual willful misfeasance or malfeasance or except as provided in the Bylaws. Current and former officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association).

The Association shall indemnify every current and former officer, director, and committee member, to the fullest extent permitted by Colorado law, against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such current or former officer, director, or committee member in connection with any action, suit, or other proceeding (or settlement thereof, if approved by the Board serving at the time of such settlement) to which such current or former officer, director, or committee member may be made a party by reason of being

or having been an officer, director, or committee member. The right to indemnification provided for herein shall not be exclusive of any other rights to which any current or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if reasonably obtainable (as determined in the Board's discretion), officers' and directors' liability insurance to fund this obligation.

12. Insurance; Repair and Reconstruction.

(a) *Association Responsibility.* The Association shall obtain and maintain at all times, as a Common Expense, property insurance and liability insurance, which complies with the requirements under the Act.

(i) The Association's insurance policies shall cover the Association, the Board and the officers of the Association, all agents and employees of the Association, and all Owners and Occupants for occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the Common Elements or other portion of the Condominium which the Association has the responsibility to maintain.

All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees, if any. The Board shall annually conduct an insurance review to determine if the policies in force are adequate to meet the needs of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance meets the requirements of this Paragraph.

(ii) All policies of insurance shall be written with a company licensed to do business in

Colorado. The company shall provide insurance certificates to each Owner and each Mortgagee.

(iii) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees upon request.

(iv) In addition to the insurance required hereinabove, the Board shall obtain as a Common Expense:

(A) worker's compensation insurance if and to the extent necessary to meet the requirements of law;

(B) officers' and directors' liability insurance if reasonably obtainable and then in such amount as the Board may determine;

(C) fidelity bonds covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds, if reasonably obtainable. The amount of such bonds shall be sufficient to cover the maximum funds, including reserve funds, in the custody of the Association or its management agent at any time during the term of the bond. If reasonably available, the amount of the bond shall be not less than three months' aggregate assessments, plus reserves on hand as of the beginning of the policy year, and the bond shall contain a waiver of any defense based upon the exclusion of persons serving without compensation; and

(D) such other insurance as the Board may reasonably determine to be necessary.

(v) Insurance carried by the Association as a Common Expense need not include any part of a Unit which is neither depicted on the Map, nor shall the Association include liability insur-

ance for individual Owners for liability arising within the Unit. Association property insurance coverage may exclude improvements and betterments installed by Owners and any structures or portions thereof covered by builder's risk insurance, provided that the Association is named as an additional insured on the builder's risk insurance policy. Association property insurance need not include coverage for the personal property of Owners. Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds.

(b) Owner Responsibility. Every Owner shall be required to obtain and maintain liability and property damage insurance at all times covering his, her or its Unit, in such amounts and with such coverages as determined by the Board in the Board's reasonable discretion, but not less than the minimum insurance amounts and coverages required under the Town of Vail's Code for short-term rentals, as applicable. To the extent not insured by policies maintained by the Association, each Owner shall be responsible for obtaining and maintaining insurance covering his, her or its Unit.

In addition, to the extent not insured by policies maintained by the Association, or to the extent insurable losses result in the payment of deductibles under the Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Unit or the Common Elements due to occurrences originating within the Owner's Unit caused by the negligence of the Owner, the failure of the Owner to maintain the Unit, or any other casualty within the Unit which causes damage to the Units or the Common Elements. Notwithstanding the forgoing, however, regardless of whether collectible insurance proceeds are available under an Owner's insurance coverage, each

Owner is liable for and shall indemnify and hold harmless all other affected Owners in the event of any loss or damage associated with work within that Owner's Unit, including but not limited to, electrical and plumbing work.

At the request of the Board, an Owner shall file a copy of each individual insurance policy covering their Unit and personal property with the Board within 10 days after receiving such request. An Owner shall promptly notify the Board in writing if any such policy is cancelled or not renewed.

(c) Board Authority - Insurance Coverage.

(i) The Board, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Owner, which will, in the Board's discretion, decrease the possibility of fire or other damage to the Condominium, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage; provided, if the cost of providing such required work would exceed \$300.00 per Unit in any fiscal year, then the required work shall be approved by the affirmative vote of Owners entitled to cast a majority of the total votes represented at an annual or special meeting of the Association, which meeting notice specifies that the purposes of the meeting include consideration of such resolution. This authority shall include, but not be limited to, requiring Owners to install smoke detectors and such other measures as the Board may reasonably require.

(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board pursuant to Par-

agraph 12(c)(i), the Association, upon 15 days written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost and expense. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Paragraph 12(c)(i), including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

(d) *Damage or Destruction.* Immediately after a fire or other casualty causing damage to or destruction of all or any part of the Condominium, the Board shall file and adjust all Association insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the Condominium to its condition prior to the damage or destruction in accordance with the Map, allowing for such changes or improvements as may be necessitated by changes in applicable building codes. Such costs may include professional fees and premiums for such bonds as the Board determines appropriate.

Unless Owners representing at least 75% of the total votes in the Association, including the Owner(s) of any damaged Units, vote not to proceed with the reconstruction and repair of improvements damaged or destroyed as a result of fire or other casualty, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged improvement(s) in accordance with the Map, allowing for such changes as may be necessitated by changes in the applicable building codes.

Nothing in these documents shall be construed to afford priority to any Owner with re-

spect to the distribution of proceeds allocable to any Unit.

The procedure for repair and reconstruction shall be as follows:

(i) Cost Estimates; Contract for Restoration. The Board shall select contractors and enter into contracts for the restoration work on such terms and conditions as the Board deems appropriate in the exercise of its business judgment.

(ii) Source and Allocation of Proceeds. All proceeds from any insurance award or settlement shall be payable to the Association for the benefit of the Owners and Mortgagees of Units. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessments shall be made against the Owner(s) of the damaged Units or against all of the Owners in accordance with the undivided interests set forth on Exhibit "B" and such assessments shall not be considered a Special Assessment under Paragraph 10.

The net proceeds of insurance collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of such casualty shall constitute a construction fund which shall be disbursed in appropriate progress payments to the contractor(s), supplier(s), and other personnel performing the work or supplying materials or services. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(iii) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons (including the Association, if appropriate) who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding the above, should the Association's policies provide for a per Unit/per occurrence deductible, each Owner shall be responsible for any deductible applicable to such Owner's Unit.

(iv) Encroachments. Encroachments upon or in favor of Units created as a result of reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the improvements were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) No Repair or Reconstruction. If a decision is made not to restore damaged improvements under Paragraph 12(d), and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

(f) Renewal and Reconstruction. Owners representing at least 75% of the total Association vote may agree that the Condominium is obsolete and adopt a plan for renewal and reconstruction.

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.

(g) Sale of Property. Owners representing at least 75% of the total Association vote may agree that the Condominium is obsolete or that the Condominium 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 Condominium 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 Condominium. 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.

13. Maintenance.

(a) By the Owner. Except to the extent otherwise provided below, each Owner shall maintain and keep in good repair in a manner consistent with the Community-Wide Standard all portions of his, her or its Unit, and, in addition, shall perform routine cleaning of the interi-

or surfaces of exterior windows and doors, and routine cleaning and sweeping of, and snow and ice removal from, any balcony, porch, courtyard, or patio, and the interior of any storage space, ski locker or Storage Closet, assigned as a Limited Common Element of his, her or its Unit or leased to such Owner.

(b) By the Association. The Association shall maintain and keep in good repair in a manner consistent with the Community-Wide Standard all of the Common Elements (including, except as provided above in Paragraph 13(a)), unless such property is dedicated to any local, state, or federal government or quasi-governmental entity.

The Association shall maintain, repair, and replace as necessary all exterior building surfaces (except as provided in Paragraph 13(a)); all structural components of the building (including, without limitation, wall studs and other materials comprising the perimeter walls of a Unit); concrete, wallboard, or other unfinished material comprising or which are otherwise a part of the perimeter walls, floors, and ceilings of the Units; and finished surfaces and materials (*e.g.*, paint, wallpaper, wallboard, etc.) of any interior Common Element hallways or corridors.

The Association's cost of providing maintenance to the Common Elements shall be a Common Expense allocated among all Units in accordance with each Unit's undivided interest in the Common Elements, as set forth on Exhibit "B;" provided, the Association's costs related to maintaining, repairing, or replacing Limited Common Elements or portions of any Unit may be allocated among all or less than all Owners as provided in Paragraph 10(b).

Except as specifically provided above, or to the extent that insurance required to be maintained or maintained by the Association covers

any damage or loss, the Association shall not be responsible for any maintenance or repair to any portion of any Unit.

If the Board determines that the need for maintenance, repair, or replacement which is the Association's responsibility is caused through the willful or negligent act of any Owner or Occupant, their guests, lessees, or invitees, and it is not fully covered or paid by insurance, then the Association may, but is not obligated to, provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, and 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 Board.

(c) Sprinkler System. To the extent that now or in the future there is a common sprinkler system installed that serves the Condominium building, all pipes, heads, and other parts of the sprinkler system shall be a part of the Common Elements (whether located within or outside of Unit boundaries) and shall be maintained, repaired, and replaced by the Association. If an Owner or Occupant causes the sprinkler system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system, the Owner of the Unit shall be responsible for any costs the Association incurs in repairing the system and for all other losses or damages resulting from such actions, including, without limitation, damages to the Common Elements, the Limited Common Elements, or other Units.

(d) Failure to Maintain. In the event any Owner fails or refuses to properly perform its maintenance responsibilities as provided in Paragraph 13(a) above, the Association shall be au-

thorized, but not obligated, to assume such Owner's maintenance responsibilities and to assess all reasonable and customary costs thereof to the non-performing Owner as a Specific Assessment. The Association shall have the right to enter into any Unit or upon any Limited Common Element to perform such maintenance responsibilities as more particularly provided in Paragraph 11(a) above.

14. Restrictions on Use, Occupancy, and Transfer.

In addition to such rules as the Board or the membership may adopt pursuant to Paragraph 11(b), the use of the Condominium and the occupancy and transfer of Units shall be subject to the use restrictions set forth in this Paragraph.

(a) Residential Use. Units shall be used for residential purposes only. No trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant residing in a Unit may conduct "discreet business activities" within the Unit which are ancillary to a primary residential use so long as:

(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;

(ii) the business activity does not involve regular visitation of the Unit or involve door-to-door solicitation of residents of the Condominium;

(iii) the business activity does not, in the Board's judgment, generate a level of pedestrian traffic to and from the Unit, which is significantly greater than that typical of Units in which no business activity is conducted;

(iv) the business activity conforms to all zoning requirements for the Condominium;

(v) the business activity does not increase the Association's liability or property insurance obligations or premiums; and

(vi) the business activity is consistent with the primarily residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, as the Board may determine in its discretion.

For purposes of this subparagraph, the terms "business" and "trade" shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (A) such activity is engaged in full or part-time; (B) such activity is intended to or does generate a profit; or (C) a license is required therefor. Notwithstanding the above, the leasing of a Unit for purposes consistent with this Paragraph shall not be considered a trade or business.

(b) *Animals and Pets.* No livestock or poultry and no other animals of any kind, other than usual and common household pets, shall be raised, bred, or kept on any part of the Condominium. Except as the Board may otherwise permit in its discretion, no more than two (2) usual and common household pets may be kept in any Unit.

Animals may not be kept, bred, or maintained for any commercial purpose and any animal which endangers the health or safety of, or unreasonably disturbs the Owners or Occupants of other Units or otherwise creates a nuisance is prohibited.

No pet shall be kept or left on any balcony, porch, courtyard, or patio, or tied to any structure outside a Unit when the pet owner or other responsible person is not present. At all times when pets are outside a Unit, they shall be kept on a leash or otherwise be under the complete physical control of a human being. Pet owners are responsible for cleaning up after their pets on all portions of the Condominium.

Except as the Board may otherwise specifically permit, and except for a balcony, porch, courtyard, or patio assigned as the Limited Common Element of a Unit, and except for Common Elements designated by the Association for use by pets, pets are prohibited on the Common Elements except as necessary to travel to and from a Unit. Any use by pets of Limited Common Elements of a Unit or Common Elements designated by the Association for use by pets shall be subject to rules and regulations adopted from time to time by the Association.

If an Owner or Occupant fails to abide by the restrictions or rules applicable to pets, in addition to any other sanctions which may be imposed under the Condominium Instruments, the Board may bar or otherwise provide for the removal of such Owner's or Occupant's pet from the Condominium. Except in the case of a pet which, in the Board's discretion, endangers the health or safety of any person, the Board shall provide an Owner or Occupant with 10 days written notice and an opportunity for a hearing in accordance with the Bylaws prior to requiring the removal of the pet from the Condominium. Without the necessity of prior notice or an opportunity for a hearing, the Board may require or otherwise provide for the immediate and permanent removal from the Condominium of any pet which, in the Board's discretion, endangers the health or safety of any person.

(c) Signs; Flags. No signs or flags of any kind that are visible from outside of a Unit shall be erected, placed, or permitted to remain on the Condominium without the written consent of the Board or its designee; provided, the Board shall have the right to erect signs and flags throughout the Condominium. The display of "For Sale" or "For Rent" signs is prohibited on the exterior of a Unit and may not be placed in any window where visible from the exterior of a Unit. The Association may adopt additional rules and regulations regarding the display of real estate signs within the Condominium from time to time.

Notwithstanding the above, to the extent the Act so provides, the Association may not prohibit the outdoor display of an American flag, a service flag, or a political sign by an Owner on such Owner's Unit if the flag is displayed in a manner consistent with the federal flag code and the sign conforms to time, place, and manner restrictions imposed by the Association in accordance with Colorado law. The Board may enact reasonable rules regulating the placement and manner of displaying American and service flags and may limit the size of any flag to the extent consistent with the Act. No flag shall be displayed from any balcony or courtyard railing or be permitted to flutter or rustle such that it may be heard by the occupants of other Units.

(d) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from and shall not be allowed to accumulate in the Units. Rubbish, trash, and garbage shall not be placed or kept on any portion of the Common Elements, including any Limited Common Elements, except in dumpsters or other receptacles provided for such purposes. The Board may enact such other reasonable rules concerning litter and trash control as it may deem necessary or appropriate or as may otherwise be

required to comply with applicable governmental or quasi-governmental permits or approvals.

(e) Use of Common Elements. No Owner or Occupant, or anyone acting on behalf of an Owner or Occupant, shall make any alteration to the Common Elements, or, except as permitted with respect to the Limited Common Elements, place, erect, or maintain any structures or other items on the Common Elements. Owners and Occupants are prohibited and restricted from using or personalizing any portion of the Condominium outside of their respective Units, except as the Board or the Condominium Instruments, as applicable, otherwise may permit.

Nothing herein shall limit the Association's right to improve the Common Elements in accordance with the Map.

(f) Impairment of Units and Easements; Use of Electrical System. No Person shall do any act or work that impairs the structural soundness or integrity of any Unit or impairs any easement, nor shall any Owner or Occupant do or permit any act or allow any condition to exist which adversely affects the other Units or the Owners or Occupants of the other Units.

Waterbeds and other abnormally heavy furnishings and equipment may not be placed, kept, installed, or otherwise used in any Unit without the Board's prior consent, which consent may be withheld based upon reasonable concerns with floor load capacities, risk of damage to Common Elements or other Units, or other reasonable factors determined by the Board. Outdoor hot tubs or spas are prohibited, excluding the hot tubs and/or spas located on or within the general Common Elements.

The electrical system serving the Units is designed to accommodate normal and customary residential usage. No Person

shall install, operate, or otherwise use machines, appliances, accessories, or equipment which overload or otherwise exceed the recommended capacity of the electrical system for the Condominium or for any Unit or cause an unreasonable disturbance to others.

(g) *Transient Use; Timesharing.* No Unit shall be made subject to or used for any hotel or transient purposes, nor for any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of a Unit rotates among owners, participants, or members of the program on a fixed or floating time schedule over a period of years, except in accordance with the Interval Declaration.

Notwithstanding the above, in the case of a Unit which is owned by a corporation, firm, limited liability company or other legal entity, such Unit may be occupied on a periodic basis by any director, officer, partner, employee, or guest of such entity. The occupancy restrictions set forth in Paragraph 14(r) also shall apply to occupancy under this subparagraph.

(h) *Antennas.* No exterior television or radio antennas or satellite dish of any sort shall be placed, allowed, or maintained upon any portion of the improvements located upon any portion of the Condominium, including any portion of any structure on the Condominium, except as otherwise must be permitted by law and pursuant to such rules as the Board may adopt. An Owner may place and maintain a satellite dish having a diameter of 18 inches or less at an approved rooftop location, provided (i) the Association has provided or provided for access from such Owner's Unit to the roof for such purpose, and (ii) the Owner shall be responsible for all costs associated with the installation, maintenance, and any necessary visual screening, as determined by the Asso-

ciation in its sole discretion, of such satellite dish, including all wiring and other components. In such event, each Unit shall be limited to one such satellite dish.

Notwithstanding the above, the Association may install and maintain cable or other apparatus for a master antenna, cable, or satellite system on the Condominium, should any such master system or systems be utilized and require any such exterior antenna, cable, satellite, or other apparatus.

(i) *Quiet Enjoyment; Noise.* No Person may use any portion of the Condominium, nor shall any Owner or Occupant use or allow the use of the Unit, in any way or for any purpose which may endanger the health or safety of, or unreasonably annoy or disturb, the Owners, Occupants, guests, or invitees of any other Unit, or in such a way as to constitute, in the sole opinion of the Board, a nuisance or a hazardous or offensive activity or use.

No Owner or Occupant may use or allow the use of the Unit, the Common Elements or the Limited Common Elements between the hours of 10:30 p.m. and 7:30 a.m. in any manner which creates levels of noise that can be heard by persons in another Unit or that, in the opinion of the Board, interferes with the rights, comfort, or convenience of the others.

(j) *Unsightly or Unkempt Conditions.* The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions is prohibited on any part of the Condominium.

(k) *Parking.* All parking on the Common Elements shall be governed by the following:

(i) Designation. Parking on the Common Elements shall be available for Owner, guest and other parking on a first come, first served basis. The Board may by rule further define, limit, or regulate parking on the Condominium, in its sole discretion. Storage Units are for storage, and shall not be utilized as living space, or other purposes in lieu of storage.

(ii) Prohibited Vehicles. Vehicles other than passenger automobiles may not be parked or otherwise stored on the Common Elements except in an area or areas, if any, specifically designated for parking or storing such vehicles. Without limiting the generality of the foregoing, such prohibitions shall apply to the following vehicles: disabled vehicles, vehicles over 18 feet in length or 7 feet in width, or having more than 4 wheels, mobile homes, motor homes, campers, trailers of any kind, boats, boat trailers, recreational vehicles (including, but not limited to, snowmobiles), pick-up trucks with camper tops, and vehicles primarily used for commercial purposes. Notwithstanding the above, trucks and commercial vehicles shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements and an Owner may park a non-passenger vehicle if such vehicle is required to be available at designated periods at the Occupant's Unit as a condition of the Occupant's employment as further set forth in the Act. Mobile homes, motor homes, recreational vehicles, campers, trailers or other similar vehicles may not be used for human habitation while parked or otherwise stored on the Common Elements.

(iii) Definitions. For purposes of this Paragraph 14(k), the terms used herein are defined as follows:

(A) A "disabled vehicle" shall mean any vehicle that has not been in operating condition within the last 30 days, does not have a current license plate, registration, or operating license, or is put on blocks.

(B) A "passenger automobile" shall include cars, pick-up trucks, "sports utility vehicles," and "mini-vans" (as such vehicles are commonly referred to, as determined in the Board's discretion) designed and used primarily to transport passengers for other than commercial purposes.

(iv) Enforcement. The Board shall be authorized to enforce this provision by towing vehicles parked in violation of this provision, in accordance with the procedures set forth in the Bylaws.

(l) Flea Markets. Carport sales, garage sales, flea markets, and similar activities involving the outdoor display and sale of goods are prohibited on any portion of the Condominium, except as the Association may determine is in the interest of the Condominium as a whole as a community activity on an occasional or intermittent basis.

(m) Firearms. The discharge of firearms, including "B-B" guns and other firearms of all types and sizes, is prohibited anywhere within the Condominium. The display of firearms outside of the Unit also is prohibited.

(n) Control Over Employees. No Owner or Occupant shall direct, supervise, or in any manner attempt to assert any control over the employees of the Association.

(o) Vacant Unit Upkeep. A Unit may not be left vacant for any extended period unless, prior to the departure of the Unit's Occupants: (i) a responsible firm or individual is designated

to care for the Unit and such firm or individual is capable of responding to any notice of any issue concerning the Unit within a four-hour period; and (ii) the Association is provided the name of said firm or individual.

(p) Floor Coverings; Other Sound-Deadening Insulation. The Owner of any Unit containing a whirlpool or "Jacuzzi" bath may be required to install a greater amount of or a different variety of insulation or other sound-deadening material than would otherwise be required for other Units.

Flooring in a Unit may not be replaced without first obtaining the Board's written approval. Any application for approval of such a change shall be accompanied by credible evidence demonstrating to the satisfaction of the Board that such replacement will not permit a greater level of noise to be heard in the Unit beneath the Unit to which the change is to be made than the noise level present before such change. Notwithstanding any such evidence, the Board may require sound abatement measures as a condition of approval or after approval has been granted if, in the Board's judgment, noise levels have materially increased as a result of such change. The Association, the Board, its officers, or directors shall not have any liability to any Person for any approval or disapproval granted hereunder, including without limitation, in the event that noise levels resulting from any such change prove to be greater than anticipated, or sound abatement measures prove inadequate.

(q) Leasing of Units. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy or use of a Unit by a person or persons other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Notwithstanding the forego-

ing, occupancy by a roommate or foster child residing in the Unit contemporaneously with the Unit Owner for which the Owner receives some consideration or benefit shall not be considered "leasing" for purposes of this subparagraph. No prior approval shall be necessary to lease a Unit; however, the leasing of Units shall be subject to and governed by the following:

(i) Units may be leased only in their entirety; no fraction or portion of a Unit may be separately leased. Short term rentals may be permitted in accordance with rules and regulations as may be adopted by the Board from time to time in its sole discretion, which may include, without limitation, provisions regarding right of access to Units, indemnification and insurance, and enforcement for violations of this Declaration or any rules and regulations adopted by the Board. For the sake of clarification and the avoidance of doubt, short term rentals shall not be considered a prohibited "trade" or "business" use under this Declaration.

(ii) The Board may adopt rules requiring written notice of any lease and payment of a security deposit in an amount not to exceed the equivalent of one months' rent, which shall be held in an escrow account maintained by the Association to protect against damage to the Common Elements. Security deposits, if collected, shall be handled, disbursed, and refunded in accordance with the procedures set forth in the Act.

(iii) The leasing of a Unit shall not relieve the Owner of any of its obligations under this Declaration, nor of any liability for violations of this Declaration relating to such Unit. Every purchaser, tenant, or lessee shall take possession of the Unit subject to the Condominium Instruments and the provisions of the Act.

(iv) The Owner of any leased Unit is deemed to have transferred and assigned to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including parking and use of recreational facilities, if any.

(r) **Occupancy Limitation.** Occupancy of each Unit shall be limited to no more than two adults (any person over the age of 18) per bedroom. If applicable law prohibits enforcement of the occupancy limitations in this subparagraph, then occupancy of a Unit shall be limited to the maximum extent permitted under applicable law.

For purposes of this subparagraph, "occupancy" means staying overnight in a Unit for a total of more than 30 days, either consecutive or non-consecutive, in any calendar year.

(s) **Use of Balconies, Porches and Patios.** Balconies, porches and patios shall be used only for the purposes intended and shall not be used for hanging garments, towels, or other objects, or for cleaning rugs or other household items. Permanently attaching flagpoles, banners, or other items to balconies or courtyard railings is prohibited. Astroturf is prohibited on balconies, porches and patios. Balconies, porches and patios shall be kept in a clean and neat condition at all times.

Except as the Association may expressly permit, no improvements, renovations, or alterations to any balcony, porch or patio, including any drilling, penetrating, invading, or otherwise altering any surface of any balcony, porch or patio is prohibited. Enclosing balconies, porches and patios is prohibited, unless (1) at least six Owners intend to enclose their balcony, porch, or patio and, (2) at least 67% of the total Association vote approves the same.

The Board may enact reasonable rules (which may include limitations on the hours of use) governing the use of television and stereos, telephones, cooking facilities, and other things on balconies, porches and patios. All furniture, furnishings, umbrellas, and other materials to be kept on a balcony, porch or patio shall be of neutral colors that are harmonious with the external colors of the Condominium building and shall be heavy enough so as not to be susceptible to being blown from balconies, porches or patios by wind. The Owner of a Unit to which a balcony, porch or patio is assigned as a Limited Common Element shall be responsible for, and shall be subject to sanction for in accordance with this Declaration, any object which blows or otherwise falls from, such balcony, porch or patio regardless of the cause.

The Board may establish additional guidelines relating to furnishings and other things on balconies, porches and patios. Any items not specifically permitted under such guidelines shall be subject to the Board's prior approval.

The terms balcony, porches or patios as used in this subparagraph, shall include any courtyard or deck assigned to a Unit as a Limited Common Element.

(t) **Use of Storage Areas or Ski Lockers.** Storage spaces or ski lockers shall not be used for any purpose other than storage of personal property, except with the prior written approval of the Board. The storage of any materials which are hazardous, offensive, or otherwise constitute a nuisance, as the Board may determine in its discretion, is prohibited. Storage spaces and ski lockers are subject to inspection at any time by the Board or its designee; provided, except in the case of an emergency, the Board shall provide reasonable notice to the person having use of the storage space or ski locker prior to an inspection.

(u) Abandoned Personal Property. Personal property, other than an automobile in a designated parking space, is prohibited from being stored, kept, or allowed to remain for a period of more than 24 hours upon any portion of the Common Elements other than as permitted in a designated storage space or on a Limited Common Element, except as the Board may otherwise approve. The Board may remove and either discard or store any such personal property in a location which the Board may determine in its discretion. Prior to taking any such action, the Board shall place a notice on the personal property and/or on the door of the Owner's Unit, if known, specifying the nature of the violation and stating that after two days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the Person which will remove the property and the name and telephone number of a Person to contact regarding the alleged violation. If two days after such notice the violation continues or thereafter occurs again within six (6) months of such notice, the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

Notwithstanding anything to the contrary, the Board, in its discretion, may determine that an emergency situation exists, and the Board may cause the personal property abandoned or stored in violation of this subparagraph to be removed and either discarded or stored in a location which the Board may determine; provided, the Board shall give to the property owner, if known, notice of the removal of the property and the location of the personal property within three days after the personal property is removed.

If personal property is removed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall

be liable to any person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

(v) Wireless Internet Systems. A wireless Internet communications network ("WiFi System") may be installed or otherwise used in a Unit provided precautions are taken to insure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Condominium. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installer of the system that proper precautions are being taken.

Notwithstanding the above, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Unit will not interfere with, disturb, or intercept other signals, networks, or systems. Each Owner is responsible for insuring that the WiFi System installed or otherwise used in his, her or its Unit does not so interfere with, disturb, or intercept other signals, networks, or systems within the Condominium. The Association may require that any WiFi System found to cause such problems be terminated.

The Association, and its current and former partners, members, directors, officers, agents, employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation or use of any WiFi System in the Condominium, nor shall any

of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Condominium.

15. Architectural Standards.

(a) Approval Required. Except as otherwise provided herein or in the Act, no Person other than the Association may make any encroachment onto the Common Elements, make any aesthetic change to any Common Element, including any Limited Common Element, make any structural alteration or addition to any portion of the Condominium, make any change to any portion of the drainage or utility systems serving the Condominium, or erect, place, or post any sign, object, light, or thing on the Common Elements or any portion of a Unit which is visible from outside the Unit, without first obtaining the written approval of the Board in accordance with the procedures of Paragraph 15(c). The Board may exempt certain matters from the procedures set forth in this Paragraph, provided they are handled in strict compliance with such guidelines as the Board may adopt. Approval by the Board shall not be deemed to constitute any representation or assurance of compliance with the requirements of any applicable laws, including local building codes; it shall be the sole responsibility of an Owner or any other Person submitting plans on behalf of an Owner to comply therewith, and under no circumstance whatsoever will the Board, or the Association be liable for any construction defect(s) that may occur as a result of such plans that were approved by the Board.

(b) Alterations Within Units. Owners may not make any improvements, renovations, or alterations ("improvements") within Units which involve drilling, penetrating, invading, or otherwise altering in any way any portion of the structure (*i.e.*, floor, ceiling, columns, beams,

etc.) comprising the Unit without the prior consent of the Association, which consent may be withheld in the discretion of the Board.

The Board may adopt reasonable regulations and guidelines with respect to such improvements to Unit, including identifying the types of improvements or specific improvements which do not require that prior notice and approval be given.

(c) Application Procedure. Applications for approval of a proposed change under this Paragraph shall be in writing and shall provide such information as the Board may reasonably require. The Board may publish written architectural standards for exterior, interior, and Common Element alterations, additions, improvements, and renovations to assist Owners in planning and submitting applications for architectural approval and to facilitate the review and approval process, but the Board shall also be entitled to consider subjective elements of proposed work in considering applications under this Paragraph.

In the event that the Board fails to approve or to disapprove any application within 60 days after being submitted, the applicant may give the Board written notice of such failure and if within 10 days after receipt of such notice the Board has still failed to act upon such application, the application shall be deemed approved; notwithstanding the foregoing, nothing herein shall authorize anyone to make any improvement which impacts the structure of the Condominium, or to construct or maintain any structure or improvement that is otherwise in violation of this Declaration, the Bylaws, or the Association rules.

(d) Conditions of Approval. As a condition of approval of a requested architectural change, modification, addition, alteration, interior improvement, or renovation, an Owner, on behalf of himself, herself or itself and his, her or

its successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance of such change, modification, addition, or alteration. In the Board's discretion, an Owner may be required to acknowledge such condition of approval, on behalf of himself, herself or itself and his, her or its successors-in-interest, by written instrument signed by the Owner, which the Board may cause to be recorded.

(e) Architectural Review Committee. Notwithstanding anything to the contrary in this Paragraph 15, the Board may appoint an architectural review committee which shall be governed by any rules and regulations promulgated by the Board.

16. Easements.

(a) Easement for Access. The Association, its agents, employees, and assigns, and each Owner and Occupant, their guests and invitees, are hereby granted non-exclusive easements of ingress and egress for pedestrian access over, through, and across sidewalks, paths, walks, lanes, hallways, common lobby areas, and other rights-of-way and common access areas serving the Units; and for vehicular access over, through, and across such portions of the Common Elements as from time to time may be paved and intended for such purposes, as necessary to provide reasonable access to and from the public ways.

(b) Easement for Encroachment. A non-exclusive easement for encroachment shall exist for any Unit or Common Element which now or hereafter encroaches on any other Unit or Common Element as a result of settlement or movement of any part of the Condominium or improvements contiguous thereto or as a result of minor inaccuracies in building or rebuilding. Such easement shall continue until such en-

croachment no longer exists. This easement does not relieve an Owner of liability in case of willful misconduct.

(c) Utility Easements. The Association hereby reserves for itself, its affiliates, its grantees, successors, and assigns, non-exclusive easements over the Common Elements and the Units, as necessary for installation, maintenance, and repair of utilities to serve the Condominium.

(d) Owner Maintenance Easements over the Common Elements. Each Owner is hereby granted a non-exclusive easement over the Common Elements as necessary for the use, maintenance, repair, and replacement of plumbing, heating, electrical and natural gas systems (including furnaces, components, pipes, wires, conduits, ducts, and the like) which are a part of or otherwise serve only such Owner's Unit and which pass across or through a portion of the Common Elements.

(e) Central Telecommunication, Receiving, and Distribution System. The Association reserves for itself, its affiliates, successors, and assignees, the exclusive and perpetual right and easement to install and operate within the Condominium, and to service the buildings and the structures within any Unit, a central telecommunication (including cable television, satellite television, and security monitoring) receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the "Community Systems") as the Association, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, the Association's right to select and contract with companies (which contracts may be entered into on behalf of or assignable to the Association) to install, operate, and maintain the Community Systems and to arrange for the provision of tele-

communications and cable and satellite television service in the area, to grant easements to such companies for such purposes, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

The Association may enter into a bulk rate service agreement for the provision of the Community Systems to all Units as a Common Expense, the costs of which shall be assessed equally against all Units, including Interval Units, as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services or the Association may assess the costs as a Specific Assessment, as appropriate.

In recognition of the fact that interruptions in cable and satellite television and other Community Systems services will occur from time to time, the Association shall not, in any manner, be liable for, and no Community System user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

(f) Recorded Easements and Licenses. The Condominium shall be subject to all easements and licenses as shown on any recorded plat affecting the Condominium and to any other easements or licenses of record or of use as of the date of recordation of this Declaration. The recording data for all presently recorded easements and licenses appurtenant to or included in the Condominium have been set forth on Exhibit "C"

to this Declaration. In addition, the Condominium is subject to all easements created or permitted by this Declaration and the Map.

17. Condemnation.

If any portion of the Common Elements is taken by eminent domain, the award therefor shall be allocated among the Units and the Owners thereof in proportion to their respective Allocated Interests in the Common Elements, except that any portion of the award attributable to the taking of any permanently assigned Limited Common Element shall be allocated to the Owner of the Unit to which that Limited Common Element was assigned or, if assigned to more than one Unit, among the Owners of such Units in equal shares.

If one or more Units or a portion of any Unit is taken by eminent domain, the award for such taking shall include just compensation to the Owner for his, her or its Unit or any portion of such Unit taken, as well as the percentage of the Unit's Allocated Interest, which Allocated Interest shall be reallocated among the Units or remaining Units in the manner described in Paragraph 7.

Nothing in these documents shall be construed to give priority to any Owner in the distribution of proceeds to such Unit.

18. Amendment and Expansion.

(a) General. With the exception of such amendments as may otherwise be permitted under this Declaration and the Act, this Declaration may be amended only with the consent or approval of the members of the Association holding at least 67% of the total Association vote.

(b) Recording of Amendment. To be effective, an amendment to this Declaration must be recorded.

(c) Termination of the Condominium. This Declaration shall have perpetual duration, unless terminated in the manner provided in §38-33.3-218 of the Act by agreement signed by Owners of Units to which at least 75% of the total votes in the Association are allocated. Such agreement shall be delivered to the governing body of Eagle County in accordance with §38-33.3-218 of the Act. If Colorado law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall be extended automatically at the expiration of such period for successive periods of 20 years each, unless terminated as provided above.

This Paragraph shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

(d) Withdrawal of Property from the Condominium. No portion of the Condominium may be withdrawn from the Condominium without the agreement of all Owners.

19. Election of Treatment under the Act.

Pursuant to C.R.S. §38-33.3-118 of the Act, the Association has elected treatment under the Act as certified in the Statement of Election attached hereto as Exhibit "D" and incorporated herein.

20. Miscellaneous Provisions.

(a) Compliance; Right of Action. Every Owner and Occupant of, and any guest and invitee of any Owner or Occupant, shall be subject to and shall comply with the Condominium Instruments and the Association rules. The Asso-

ciation and any aggrieved Owner shall have a right of action against any Owner or Occupant, or the Association, upon the failure of such Owner, Occupant, guest, invitee, or the Association to comply with the Condominium Instruments, Association rules, decisions of the Association. Furthermore, each Owner and Occupant, shall at all times, be in compliance with all valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium or a portion thereof. No improper, offensive, or unlawful use shall be permitted within the Condominium or any portion thereof.

Each Owner shall be responsible for, and may be sanctioned for, all violations of the Condominium Instruments by the Occupants, tenants, guests, or invitees to their Units, and for any damage to the Common Elements that such Persons may cause.

The termination of membership in the Association shall not relieve or release any former Owner from any liability incurred under, or in any way connected with, such Owner's obligations under the Condominium Instruments during his or her period of ownership.

(b) Severability. Invalidation of any provision of this Declaration, by judgment, court order, or otherwise, in one circumstance shall in no way affect the application of such provision to other circumstances nor affect any other provision(s), which shall all remain in full force and effect.

(c) Exhibits. The attached Exhibits "A," "B," and "C" and "D," are incorporated into this Declaration by reference and may be amended in accordance with the provisions of this Declaration and the Act.

21. Resolving Disputes.

(a) Agreement to Encourage Resolution of Disputes Without Litigation. The Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Chapter (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Association without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described below and to resolve such Claims by the alternative dispute resolution procedures set forth in Paragraph 21(b).

(i) Claims. As used in this Paragraph, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(A) the interpretation, application, or enforcement of the Condominium Instruments; or

(B) the rights, obligations, and duties of any Bound Party under the Condominium Instruments; or

(C) the design or construction of improvements within the Association, other than matters of aesthetic judgment under Paragraph 15, which shall not be subject to review.

(ii) Exempt Actions. Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Paragraph 21(b):

(A) any suit by the Association to collect assessments or other amounts due from any Owner;

(B) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration relating to creation and maintenance of community standards;

(C) any suit that does not include the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Condominium Instruments;

(D) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Paragraph 21(b); and

(E) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Paragraph 21(b), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Paragraph.

(b) Disputes Resolution Procedures.

(i) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

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

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

(C) Evidence that the Claimant and Respondent have previously discussed or attempted to discuss, in good faith, resolution of the Claim, and such efforts were unsuccessful; and

(D) the Claimant's proposed resolution or remedy.

(ii) *Negotiation.* After Notice is received, The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(iii) *Mediation.* If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Eagle County, Colorado area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicat-

ing that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(iv) *Settlement.* Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Paragraph 21(b). In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

(c) *Initiation of Litigation by Association.* In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners entitled to cast 67% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

(i) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(ii) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(iii) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(iv) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Paragraph shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

(d) *Limitation of Damages.* All Bound Parties agree that in any lawsuit arising out of a Claim subject to the procedures set forth in Paragraph 21(a), any damage award shall be limited to the amount of any actual economic loss suffered by the prevailing party and shall not include punitive damages or damages for pain and suffering, except that punitive damages shall be permitted in the case of a lawsuit arising out of a violation of the Condominium Instruments.

IN WITNESS WHEREOF, the undersigned hereby executes this Declaration by and through its authorized representatives on the day and year first above written.

Vantage Point – Vail Condominium Association, Inc., a Colorado nonprofit corporation

By: _____
Carolyn Landen, President

STATE OF COLORADO)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by Carolyn Landen, as President of Vantage Point – Vail Condominium Association, Inc., a Colorado nonprofit corporation, on behalf of the corporation.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

List of Exhibits

	<u>Exhibit</u>
LEGAL DESCRIPTION OF PROPERTY	"A"
PERCENTAGE SHARE OF UNDIVIDED INTEREST IN COMMON ELEMENTS AND LIABILITY FOR COMMON EXPENSES	"B"
RECORDED EASEMENTS AND LICENSES.....	"C"
STATEMENT OF ELECTION.	"D"

EXHIBIT "A"

Legal Description of Property

THE CONDOMINIUM MAP OF VANTAGE POINT – VAIL CONDOMINIUMS RECORDED FEBRUARY 23, 1973 IN THE OFFICE OF THE CLERK AND RECORDER OF EAGLE COUNTY, COLORADO IN BOOK 227 AT PAGE 891, AS SUPPLEMENTED BY THAT CERTAIN SUPPLEMENT TO THE CONDOMINIUM MAP OF VANTAGE POINT – VAIL CONDOMINIUMS RECORDED NOVEMBER 27, 1974 IN SUCH RECORDS IN BOOK 237 AT PAGE 609.

EXHIBIT "B"

**Percentage Share of Undivided Interest in Common Elements
and Liability for Common Expenses**

Unit Designation (Identifying Number)	Undivided Percentage Interest
101	1.51%
102	1.51%
103	1.51%
104	1.51%
105	1.51%
106	1.51%
107	1.51%
108	0.75%
109	0.75%
110	1.51%
111	1.51%
112	1.51%
113	0.75%
114	0.75%
115	1.51%
116*	1.51%
201	1.51%
202	1.51%
203	1.51%
204	1.51%
205	1.51%
206	1.51%
207	1.51%
208	0.75%
209	0.75%
210	1.85%
211*	1.51%
212	1.51%
213	0.75%
214	0.75%

215*	1.51%
216	1.51%
301	1.51%
302	1.51%
303	1.51%
304	2.30%
305*	1.51%
306	1.51%
307	1.51%
308	1.85%
309*	1.51%
310*	1.51%
311	0.75%
312*	0.75%
313	1.51%
314	1.51%
401	1.85%
402	1.85%
403	1.51%
404	2.30%
405	1.51%
406	1.85%
407	2.30%
408	2.30%
409*	2.30%
410	1.51%
411	1.85%
501	1.85%
502	1.85%
503	1.85%
504	1.85%
601	2.59%
602	1.85%
603	1.85%
604*	1.85%
Total: 65	100%

EXHIBIT "C"

Recorded Easements and Licenses

1. RIGHT OF PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 04, 1923, IN BOOK 93 AT PAGE 98 AND IN UNITED STATES PATENT RECORDED MAY 24, 1904, IN BOOK 48 AT PAGE 503.
2. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 04, 1923, IN BOOK 93 AT PAGE 98 AND IN UNITED STATES PATENT RECORDED MAY 24, 1904 IN BOOK 48 AT PAGE 503.
3. UTILITY AND PEDESTRIAN EASEMENT AS RESERVED IN INSTRUMENT RECORDED MAY 18, 1970 IN BOOK 217 AT PAGE 675.
4. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW AS CONTAINED IN INSTRUMENT RECORDED MAY 18, 1970, IN BOOK 217 AT PAGE 675 AND AS AMENDED IN INSTRUMENT RECORDED JULY 30, 1970, IN BOOK 218 AT PAGE 334 AND AS AMENDED IN INSTRUMENT RECORDED OCTOBER 15, 1970, IN BOOK 218 AT PAGE 899.
5. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF VAIL LIONSHEAD, FIRST FILING RECORDED JULY 30, 1970 AT RECEPTION NO. 113926.
6. EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE CONDOMINIUM MAP OF VANTAGE POINT-VAIL CONDOMINIUMS RECORDED FEBRUARY 23, 1973 IN BOOK 227 AT PAGE 891 AND SUPPLEMENT RECORDED NOVEMBER 27, 1974 IN BOOK 237 AT PAGE 609.
7. TERMS, CONDITIONS AND PROVISIONS OF GRANT OF EASEMENT RECORDED DECEMBER 16, 2011 AT RECEPTION NO. 201123505.

EXHIBIT "D"

Space Above This Line for Recorder's Use

Statement of Election of Vantage Point – Vail Condominiums

VANTAGE POINT-VAIL CONDOMINIUMS ("Vantage Point") is a common interest community located in Eagle County, Colorado. The specific property which comprises Vantage Point is more particularly described as:

THE CONDOMINIUM MAP OF VANTAGE POINT – VAIL CONDOMINIUMS RECORDED FEBRUARY 23, 1973, IN THE OFFICE OF THE CLERK AND RECORDER OF EAGLE COUNTY, COLORADO IN BOOK 227 AT PAGE 891, AS SUPPLEMENTED BY THAT CERTAIN SUPPLEMENT TO THE CONDOMINIUM MAP OF VANTAGE POINT – VAIL CONDOMINIUMS RECORDED NOVEMBER 27, 1974 IN SUCH RECORDS IN BOOK 237 AT PAGE 609, COUNTY OF EAGLE, STATE OF COLORADO.

Vantage Point is governed by VANTAGE POINT – VAIL CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation (the "Association"). The Association hereby certifies, confirms and ratifies that the Association has elected to accept the provisions of the Colorado Common Interest Ownership Act ("Act") in accordance with C.R.S. §38-33.3-118. The Board of Directors of the Association adopted a resolution on _____, 2023 recommending that the Association accept the provisions of the Act and such adoption of the Act was presented to the members of the Association on September 9, 2023 at 9:00 a.m. Mountain Time, at a duly noticed annual meeting of the Association in which a quorum of the members was present. The Association hereby certifies, confirms, and ratifies that acceptance of the Act was authorized by at least sixty-seven percent (67%) of the members present at the meeting, in person or by proxy, entitled to vote. This Statement of Election shall be recorded in the Eagle County, Colorado real property records as evidence of the Association's election to be governed by the Act. For absence of doubt, this election shall not invalidate provisions of any declaration, bylaws or plats or maps in existence on June 30, 1992 pursuant to C.R.S. §38-33.3-118(5).

Names and Addresses of the Association's Officers and Directors:

Directors/Officers:

1. Carolyn Landen, President/Director
2. Jackie Baker, Vice President
3. Michael Freedman, Treasurer
4. Timothy Cook, Secretary
5. Stewart Birmingham, Director
6. Chris Lombardo, Director
7. Ed Wundrum, Director

The Directors' address is:

508 E. Lionshead Circle #110
Vail, Colorado, 81657

