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# SECOND AMENDED AND RESTATED DECLARATION OF GRANTS, COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# TELLURIDE MOUNTAIN VILLAGE RESORT CONDOMINIUMS, A CONDOMINIUM COMMON INTEREST COMMUNITY

# LOCATED IN TOWN OF MOUNTAIN VILLAGE, SAN MIGUEL COUNTY, COLORADO

**January 29, 2015**

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**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, GRANTS AND EASEMENTS FOR TELLURIDE MOUNTAIN VILLAGE RESORT CONDOMINIUMS, A CONDOMINIUM COMMON INTEREST COMMUNITY**

**THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, GRANTS AND EASEMENTS FOR TELLURIDE MOUNTAIN VILLAGE RESORT CONDOMINIUMS, A CONDOMINIUM COMMON INTEREST COMMUNITY** (the "**Restated Declaration**") is made, effective as of Effective Date (as defined below), by the Owners (as defined below) who hereby resubmit, re-declare and re-convey all of the Community Property (as defined below) hereafter to be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, grants, charges and liens hereinafter set forth.

This Restated Declaration hereby fully amends, supersedes, revokes and replaces in its entirety the original Declaration of Grants, Covenants, Conditions and Restrictions for the Telluride Mountain Village Resort Condominiums, a Condominium Common Interest Community recorded on February 11, 2009 in the Official Records at Reception No. 405677 (the "**Original Declaration**") and the First Amended and Restated Declaration of Grants, Covenants, Conditions and Restrictions for the Telluride Mountain Village Resort Condominiums, a Condominium Common Interest Community recorded on November 23, 2011 in the Official Records at Reception No. 420677 (the "**First Restated Declaration**").

All of the Owners and the Association hereby confirm, ratify, declare and state that, from and after the Effective Date, the Community, Community Property and all Units shall be held, owned, occupied, maintained and operated, subject to the provisions, terms, conditions, restrictions, grants, easements, rights, obligations and liabilities set forth in this Restated Declaration and agree and acknowledge that all previous provisions, terms, conditions, restrictions, grants, easements, rights, obligations and liabilities set forth in the Original Declaration and the First Restated Declaration are hereby released and terminated and are superseded and replaced in their entirety with the provisions, terms, conditions, restrictions, grants, easements, rights, obligations and liabilities set forth in this Restated Declaration.

This Restated Declaration was duly adopted, approved, and authorized, and its execution and recordation directed, by the affirmative vote of 100% of the Voting Interests in the Association at a duly noticed Owners' meeting held on January 26, 2015.

## BACKGROUND RECITALS

The Telluride Mountain Village Resort Condominiums is a mixed-use condominium common interest community and mixed-use resort complex located in the Village Center in the Town of Mountain Village, Colorado that includes residential and commercial condominium units, hotel facilities and operations, employee housing and various public improvements.

In 2002, the Town of Mountain Village, Mountain Village Metropolitan District and the Telluride Mountain Village Owners Association (collectively the "**Mountain Village Entities**") recognized the need for a high quality hotel resort complex to be located in the Village Center of the Town Mountain Village to generate economic vitality and sustainability by providing hotel, lodging and conference facilities and amenities for the benefit of the Town of Mountain Village residents, business owners and guests.

The Mountain Village Entities purchased Lots 50 and 51R located in the Village Center and entered into an agreement with the then owner of Lot 38 to develop and construct the Community through the Town's Planned Unit Development regulations ("**Resort PUD**").

The primary stated public benefit of the Resort PUD as reflected in the Town Requirements (defined below) is the provision of high quality hotel, lodging and/or short term accommodations facilities, amenities and operations.

The Mountain Village Entities granted several concessions and incentives in connection with the entitlement and development of this Resort PUD and in exchange placed certain restrictions on the Resort PUD, which are designed to ensure that high quality hotel, lodging and/or short term accommodations facilities, amenities and operations are provided and maintained within the Community.

Under the Town Requirements, the Town required the creation of the "Hotel Unit" (defined below) which contains the space, facilities and amenities necessary for the operation of high quality hotel, lodging and/or short term accommodations facilities, amenities and operations.

The Town Requirements impose various requirements and restrictions on the Owner of the Hotel Unit in order to ensure that the primary public benefit of high quality hotel, lodging and/or short term accommodations facilities, amenities and operations is provided, maintained and preserved within the Community.

This Restated Declaration and the configuration of the Hotel Unit and Hotel Condominiums are designed to ensure compliance with the Town Requirements.

The Community contains various improvements, spaces and facilities that are owned by the Town which provide public amenities such as ice skating, gathering places, plaza areas, restrooms, and parking for the residents, guests and business owners within the Town to further encourage economic vitality and sustainability.

The Community contains parking facilities in an underground parking garage which combine public parking owned and provided by the Town and parking for the Owners and Occupants of the Community located within the Hotel Unit and operated by the Hotel Unit Owner.

The Town Requirements require the Community to be operated and maintained in accordance with certain "Standards" that are designed to provide, maintain and preserve high quality hotel, lodging and/or short term accommodations facilities, amenities and operations and impose requirements upon the Hotel Unit Owner (rather than the individual Residence Condominium and Hotel Condominium Owners) to ensure that the Standards are met and maintained.

This Restated Declaration grants certain rights, powers and authority to and for the benefit of the Hotel Unit Owner that are designed to enable the Hotel Unit Owner to comply with the Town Requirements.

The Hotel Unit includes various facilities and amenities such as a pool, fitness center, spa, lounge, restaurants and the like that are necessary for the successful operation of high quality hotel, lodging and/or short term accommodations facilities, amenities and operations.

The individual Residence Condominium Owners and Hotel Condominium Owners are granted access and use rights in and to those facilities and amenities located in the Hotel Unit under this Restated Declaration, which are subject to rules and regulations adopted by the Hotel Unit Owner to ensure the proper use and operations of such facilities and amenities.

This Restated Declaration provides a comprehensive framework for the operation, maintenance, use and enjoyment of the Community for all Unit Owners and Occupants, their guests and invitees and the general public in a manner that ensures compliance with the goals, objective and requirements of Town Requirements.

In furtherance of the above stated goals and intent, the Community shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions set forth in this Restated Declaration (as this Restated Declaration may be amended from time to time in accordance with the terms hereof and thereof), in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment thereof and compliance with the Town Requirements.

All of the covenants, conditions and restrictions set forth in this Restated Declaration shall constitute covenants running with the land and equitable servitudes and liens and shall be binding upon and for the benefit of

all parties having or acquiring an interest in the Community including, but not limited to, the owner(s) of the all Units, including without limitation the Hotel Unit and the heirs, successors, executors, administrators and assigns of any such parties and all subsequent owners of any such interests.

## ARTICLE 1
## STATEMENT OF INTENT AND PURPOSE

1.1 **Authority**. This Restated Declaration is entered into in accordance with: (i) the Act; and (ii) the Nonprofit Act. The Act and the Nonprofit Act shall be jointly hereinafter referenced as the "**Community Laws**."

1.2 **Declaration**. The terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations set forth in this Restated Declaration shall be deemed to run with the Real Property, Community Property and Units and shall be binding upon and accrue to the benefit of all the Real Property, Community Property and Units and any Person acquiring and holding an interest in the Real Property, Community Property and Units, as well as each of their respective grantees, successors, heirs, personal representatives, and/or assigns.

1.3 **Purpose**. This Restated Declaration is entered into for the purposes of confirming the prior submission of the Real Property and all Improvements constructed thereon to condominium ownership under the Act and to continue within the Community ownership and use plan. The Association has been incorporated under the laws of the State of Colorado, for the purpose of managing and maintaining the Community, all as hereinafter set forth. The Community has been created on the Land under the name and style of "*Telluride Mountain Village Resort Condominiums, a condominium common interest community*." This Restated Declaration confirms, ratifies and defines the character, duration, rights, duties, obligations and limitations of condominium ownership within the Community, and the administration and management thereof.

## ARTICLE 2
## DEFINITIONS

The following terms, when used in this Restated Declaration, shall have the respective meanings ascribed to them in this Article, except where the context clearly requires a different meaning or where otherwise defined.

2.1 "**Act**" means the Colorado Common Interest Ownership Act, Colorado Revised Statutes Title 38, Article 33.3 *et seq.*, as of the Effective Date, and as subsequently amended from time-to-time.

2.2 "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is led by, or is under common Control with such Person.

2.3 "**Allocated Interests**" is defined in Section 5.1.

2.4 "**Allocated Interests in Common Expenses and Voting Rights**" is defined in Section 5.2.

2.5 "**Articles**" means the Articles of Incorporation of the Association filed with the Colorado Secretary of State, as such Articles may be amended from time-to-time.

2.6 "**Assessments Lien**" is defined in Section 9.3.1.

2.7 "**Assessments**" means Regular Assessments, Special Assessments, Reimbursement Assessments and Capital Improvement Assessments.

2.8 "**Association**" means the "*TMVRC Owners' Association, Inc., a Colorado nonprofit corporation*", its successors and assigns. Owners, by virtue of their ownership of Units, shall be deemed Members in the Association which Association shall be charged with the management and maintenance of the Common Elements and Community, to the extent set forth in this Restated Declaration.

2.9 "**Association Manager**" means the Person (who may be the Hotel Unit Owner, the Hotel Operator or any Affiliate thereof) engaged by the Board from time-to-time to manage and/or conduct the affairs of the Association in connection with the Community and/or Community Property pursuant to a Management Agreement.

2.10 "**Association Property**" means any and all assets, personal property (both tangible and intangible) and non-Common Element real property (including any Units acquired through foreclosure of Assessment lien rights or otherwise) owned by and/or with title vested in the Association. Equitable ownership of any and all Association Property shall be deemed to vest in the Owners, administered by and through the Association, as tenants-in-common with undivided ownership percentages in the Association Property in proportion to the respective Allocated Interests assigned to each Owner(s)' Unit(s) under this Restated Declaration.

2.11 "**Association Units Easement**" is defined in Section 4.1.2.

2.12 "**Board**" means the Association Board of Directors, designated as the body governing the affairs of the Association, all pursuant to the Act and the Community Documents.

2.13 "**Blanket Insurance**" is defined in Section 16.1.1.

2.14 "**Building(s)**" means the structure and/or structures in and on which the Units are located.

2.15 "**Building Façades**" means the Building Improvements installed on the portions of the Buildings lying outside of the unfinished exterior surfaces of all external Building walls bounding the Units and other Common Elements, whether or not depicted on the Community Map.

2.16 "**Building Roofs and Attic Spaces**" means the upper portion of the Buildings lying (i) above the bottom surface of the dropped ceiling, if any, or, if none, above (and including) the unfinished exterior surfaces of the of upper joists, of all Units bounding the top of any portion of any Building; and (ii) below (and including) the upper surface of the external roofing material covering the Buildings, including any related attic areas therein, whether or not depicted on the Community Map.

2.17 "**Building Safety/Systems Improvements**" means any and all Unit location/emergency exit maps and/or signage on the interior portion of each Residence Unit's entry door, manually operated doors containing automatic closing devices (i.e. spring hinges or door closers), and various Building and/or related systems within Units (both by means of vertical and horizontal penetrations and whether or not depicted on the Community Map), provided such systems and related enclosures/improvements are installed so as to minimize impacts on the usage and/or occupancy of the Unit and in no manner as to materially impact the habitability of the Unit.

2.18 "**Building Structural Elements**" means all structural elements/components, columns and bearing walls, all post-tension cables and/or rods whether located within the Units, contained in any portion of the Buildings, or contained in other portions of the Improvements, whether or not depicted on the Community Map. The Building Structural Elements shall include all Building Façades, but shall not include any Plaza Unit Improvements.

2.19 "**Building Structural Elements Easement Areas**" means those portions of Units designated for location of Building Structural Elements, including without limitation, as shown on the Community Map.

2.20 "**Bylaws**" means the Bylaws of the Association, as adopted by the Association and amended from time-to-time.

2.21 "**Capital Improvement Assessments**" is defined in Section 9.7.

2.22 "**Civic Condominiums**" means the 12 Units designated as "*Civic Condominiums*" on the Community Map and Exhibit "B". References herein to "*Commercial Unit*" shall include Civic Condominiums, unless the context prohibits or it is otherwise expressly provided.

2.23 "**Commercial Units**" means each of the Civic Condominiums and Retail Condominiums. References herein to "*Units*" shall include the Commercial Units unless the context would prohibit or it is otherwise expressly provided. The designation of a Unit as "*Commercial*" is for ease of reference only and is not intended to limit or define the permitted uses of the Commercial Units. As of the Effective Date, the Commercial Units consist of 12 Civic Condominiums and 10 Retail Condominiums.

2.24 "**Common Community Coverages**" is defined in Section 16.2.

2.25 "**Commercial Unit Owner**" means and refers to the Owner(s) from time-to-time of a Commercial Unit.

2.26 "**Common Elements**" means and includes: (i) the General Common Elements and (ii) the Limited Common Elements, as further set forth in Section 3.3. References herein to Common Elements also shall include both "*General Common Elements*" and "*Limited Common Elements*," unless the context would prohibit or it is otherwise expressly provided. For purposes of clarity, the Common Elements do not include the Shared Facilities.

2.27 "**Common Elements Easement**" is defined in Section 4.1.1.

2.28 "**Common Expenses**" is defined in Section 9.1.1.

2.29 "**Common Surplus**" means, within a single fiscal cycle, all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues, in excess of the actual amount of Common Expenses incurred during such fiscal cycle.

2.30 "**Common Unit Entrance Areas**" is defined in Section 4.4.

2.31 "**Common Unit Entrance Areas Access Easement**" is defined in Section 4.4.

2.32 "**Community**" means the Colorado common interest condominium community located on the Real Property, which has been submitted to condominium ownership pursuant to the Act and as herein provided. The Community is named, "*Telluride Mountain Village Resort Condominiums, a condominium common interest community*," which name may be amended from time-to-time by the vote of the Owners holding a majority of the Voting Interests.

2.33 "**Community Documents**" means this Restated Declaration, the Community Map, the Articles, Bylaws and the Community Rules and Regulations (if any), as well as any other documents governing the operation and/or ownership within the Community and/or by the Association.

2.34 "**Community Map**" means the "*Condominium Map of the Telluride Mountain Village Resort Condominiums*" recorded in the Official Records on February 11, 2009 at Reception No. 405678, Pages 4064-4162 and the "*First Amendment to the Condominium Map of the Telluride Mountain Village Resort Condominiums*" recorded in the Official Records on January 29, 2015 at Reception No. 436250, as such Community Map may be further amended from time-to-time. By this reference, the Community Map is incorporated into this Restated Declaration, as that part of this Restated Declaration that depicts all or any portion the Units in three dimensions.

2.35 "**Community Property**" means the Real Property, the Improvements, the Association Property, and all other real or personal (tangible or intangible) property, easements and any other property and property rights submitted and/or dedicated by the Community Documents for ownership and operation under a condominium regime, pursuant to the Act and is intended to be broadly construed.

2.36 "**Community Rules and Regulations**" means the rules and regulations of the Community, if any, as adopted by the Board and amended from time-to-time.

2.37 "**Control**" (or "**under common Control with**") means the possession, directly or indirectly, of the power to direct or cause the direction and management of the policies of a Person, whether through ownership of more than 50% of the voting securities or other ownership interests of such Person, by contract or otherwise.

2.38 "**County**" means San Miguel County, Colorado.

2.39 "**Deck Supports**" is defined in Section 3.3.1.4.

2.40 "**Declarant**" for purposes of this Restated Declaration there is no Declarant as such term is used under the Act. The original Declarant under the Original Declaration was RAL Mountain Village Lodging, LCC, a Delaware limited liability company which has been dissolved and was the entity that developed and constructed the Community.

2.41 "**Declaration**" all references herein to the "Declaration" shall mean this Restated Declaration, if not specifically referencing the "Original Declaration" or the "First Restated Declaration."

2.42 "**Director(s)**" mean the members of the Board, as defined in Section 8.1.1 and pursuant to the Act and Nonprofit Act.

2.43 "**Effective Date**" means the date of recordation of this Restated Declaration in the Official Records.

2.44 "**Employee Condominiums**" means the ten (10) Units designated as "*Employee Condominiums*" on the Community Map and Exhibit "B". Employee Condominiums shall be owned, occupied, used, leased and/or maintained in compliance with the laws, regulation, rules and restrictions of the Town of Mountain Village including without limitation the Town Requirements and the Employee Housing Deed Restriction recorded at Reception No. 420677 in the Official Records as may be amended from time to time.

2.45 "**Employee Condominium Owner**" means and refers to the qualified Owner(s) from time-to-time of an Employee Condominium.

2.46 "**Employee Housing Deed Restriction**" means and refers to the Employee Housing Deed Restriction imposed by the Town in accordance with the Town Requirements that encumbers only the Employee Condominiums and restricts the use and occupancy of the Employee Condominiums, which is recorded at Reception No. 420677 in the Official Records.

2.47 "**First Mortgagee**" means any Person holding a first mortgage on a Unit or Units.

2.48 "**Garage Limited Common Elements**" is defined in Section 14.2.

2.49 "**Garage LCE Insurance Costs**" is defined in Section 14.6.2.

2.50 "**Garage LCE Maintenance**" is defined in Section 14.6.3.

2.51 "**Garage LCE Maintenance Costs**" is defined in Section 14.6.3.

2.52 "**Garage Ramp/Tunnel**" means the common access ramp and tunnel extending from Mountain Village Boulevard to the entrance of the underground parking garage in the Community.

2.53 "**Garage Ramp/Tunnel Budget**" is defined in Section 14.7.3.1.

2.54 "**Garage Ramp/Tunnel Costs**" is defined in Section 14.7.1.1.

2.55 "**Garage Ramp/Tunnel Easement**" is defined in Section 14.1.

2.56 "**Garage Ramp/Tunnel Maintenance**" is defined in Section 14.7.1.1.

2.57 "**Garage Stakeholders**" means (i) the Town Parking Condominium Owner; (ii) the Individual Parking Condominium Owners; and (iii) the Hotel Unit Owner.

2.58 "**General Common Elements**" are defined in Section 3.3.1. References herein to "*Common Elements*" shall include General Common Elements, unless the context would prohibit or it otherwise is expressly provided.

2.59 "**General Shared Facilities**" is defined in Section 11.3.1 and Exhibits "B" and "C" and are depicted on the Community Map.

2.60 "**General Shared Facilities Easement**" is defined in Section 12.1.1.

2.61 "**General Shared Facilities Expenses**" is defined in Section 13.1.1.

2.62 "**Hotel**" means the hotel, lodging and/or short term accommodations program and operations to be conducted in the Hotel Unit, Hotel Condominiums and/or other portions of the Community, from time-to-time.

2.63 "**Hotel Condominiums**" means each of the Units designated as "*Hotel Condominiums*" on the Community Map and Exhibit "B".

2.64 "**Hotel Condominiums Reconfiguration Restrictions**" means those certain restrictions and conditions prohibiting reconfiguration of any Hotel Condominiums, as set forth in that certain "*Declaration of Condominium Hotel Covenants and Restrictions (Unit Reconfiguration Restrictions)*" dated April 4, 2006, which document was both attached as Exhibit "B" to that certain Town Council Resolution recorded in the Official Records at Reception No. 384748 and separately recorded at Reception No. 384749.

2.65 "**Hotel Deed Restriction**" means that certain "*Amended and Restated Declaration of Condominium Hotel Covenant and Restrictions (Hotel Deed Restriction)*" by and between the Town and the Hotel Unit Owner recorded at Reception No. 430163 in the Official Records, as may be amended from time to time.

2.66 "**Hotel Exclusive Services**" means those services provided by (i) Hotel Owner; and/or (ii) Hotel Operator for the Residence Condominium and Hotel Condominium Units in accordance with the list of Hotel Exclusive Services attached as Exhibit "F".

2.67 "**Hotel Marketing Services**" means the those services related to the marketing of an Residence Condominium or Hotel Condominium Unit for guest rental by (i) the Hotel Unit Owner; (ii) the Hotel Operator; (iii) the Owner of a Residence Condominium or Hotel Condominium Unit; and/or (iv) a Qualified Rental Program on behalf of the Owner pursuant to a rental management agreement and not included in the list of Hotel Exclusive Services.

2.68 "**Hotel/IPC Parking Maintenance Areas**" is defined in Section 14.6.2.

2.69 "**Hotel Operator**" is defined in Section 15.1.

2.70 "**Hotel Services**" means the Hotel operations and/or related services offered and operated within the Community, whether conducted by (i) the Hotel Unit Owner; (ii) the Hotel Operator; and/or (iii) otherwise on behalf of an Owner of a Residence Condominium or Hotel Condominium Unit. The Hotel Services shall be conducted at all times in accordance with the Standards. The Hotel Services include (i) the Hotel Exclusive Services, and (ii) the Hotel Marketing Services.

2.71 "**Hotel Shared Facilities**" is defined in Section 11.3.2 and Exhibits "B" and "C" and are depicted on the Community Map.

2.72 "**Hotel Shared Facilities Easement**" is defined in Section 12.1.2.

2.73 "**Hotel Shared Facilities Expenses**" is defined in Section 13.1.2.

2.74 "**Hotel Unit**" means the Unit designated as the "*Hotel Unit*" on the Community Map and Exhibit "B" consisting of (i) the Non-Shared Facilities, and (ii) the Hotel Shared Facilities.

2.75 "**Hotel Unit Owner**" means the Owner from time-to-time of the Hotel Unit.

2.76 "**HVAC System** means the heating, ventilating and air conditioning system, including, without limitation, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of heating, ventilating and air conditioning services to any Improvements.

2.77 "**Ice Rink Unit**" means the Unit designated as "*Ice Rink Unit*" on the Community Map and Exhibit "B".

2.78 "**Improvements**" means all structures and improvements located above, on or below the surface of the Real Property, including the Buildings and all sidewalks, utility and other installations.

2.79 "**Individual Parking Condominiums**" means the 19 individual parking spaces in the Parking Garage designated as "*Individual Parking Condominiums*" or "*IPC*" on the Community Map and Exhibit "B".

2.80 "**Life Safety Systems**" means any and all (i) Building Safety/Systems Improvements and (ii) emergency lighting, audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or subsequently installed anywhere within the Community Property. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed part of the Hotel Shared Facilities, unless otherwise specified on the Community Map. Without limiting the generality of the foregoing, when the context shall so allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all Stairways.

2.81 "**Limited Common Elements**" means those Common Elements designated and reserved for the exclusive use by one or more Unit(s), but less than all Units, and shall be deemed to be inseparable appurtenances to such Units. In describing a Unit, no separate reference to Limited Common Elements need be made in any deed, lease, assignment of lease, sublease, mortgage, or other instrument, as further set forth in Section 3.3. References herein to "*Common Elements*" shall include Limited Common Elements, unless the context would prohibit or it otherwise is expressly provided.

2.82 "**Management Agreement**" is defined in Section 8.1.8.

2.83 "**Members**" means all members of the Association. Each Owner of a Unit automatically becomes, and continues to be, a Member of the Association, by virtue of such Owner's ownership of a Unit(s).

2.84 "**Nonprofit Act**" means the Colorado Revised Nonprofit Corporation Act, Colorado Revised Statutes Title 7, Article 121, *et seq.*, as amended from time-to-time.

2.85 "**Non-Shared Facilities**" is defined in Sections 11.6 and in Exhibit "B" and "C".

2.86 "**Non-Shared Parking Facilities**" are that portion of the Parking Facilities generally described in Section 14.1(iii), as such facilities are depicted and described on the Community Map and in Exhibit "B" and "C" as "*Non-Shared Parking Facilities*."

2.87 "**Occupant**" means an Owner, or a tenant thereof, in possession of a Unit. An Occupant shall also be deemed to include the family members, guests, agents and invitees of such Occupant, including transient Hotel guests, not to exceed permitted occupancy limitations.

2.88 "**Official Records**" means the official real property records of the Office of the Clerk and Recorder of the County.

2.89 "**Owner**" means any Person vested in title to one or more Units. All Owners automatically become, and continue to be, Members pursuant to their ownership of Unit(s). The term "Owner" shall not refer to any holder of a mortgage or lien holder, unless such mortgagee or lien holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. The term "*Owner*" shall refer to each and every: (a) Commercial Unit Owner; (b) Residence Condominium Unit Owner; (c) Hotel Condominium Unit Owner; (d) Employee Condominium Unit Owner; (e) the Hotel Unit Owner; (f) Parking Unit Owner; (g) Ice Rink Unit Owner; and (h) Plaza Unit Owner, unless expressly limited by the specific context used.

2.90 "**Owner's Unit Work**" is defined in Section 7.1.2.

2.91 "**Owner's Work Approval/Denial**" is defined in Section 8.1.3.

2.92 "**Owner's Work Proposal**" is defined in Section 8.1.3.

2.93 "**Parking Facilities**" is generally described in Section 14.1.

2.94 "**Parking Facilities Budget**" is defined in Section 14.6.5.1.

2.95 "**Parking Facilities Costs**" is defined in Section 14.6.4.

2.96 "**Parking Facilities Utilities Costs**" is defined in Section 14.6.2.

2.97 "**Parking Garage**" means the underground parking garage within the Community that is located on two subsurface levels as shown on the Community Map.

2.98 "**Parking Management Agreement**" means the Parking Management Agreement between Hotel Unit Owner and the Town governing the operations management and ownership of the Parking Garage in the Community, including the Parking Units.

2.99 "**Parking Shared Facilities**" is defined in Section 11.3.3.

2.100 "**Parking Units**" means the Individual Parking Condominiums and the Town Parking Condominium, as such Parking Units are set forth on the Community Map and in Exhibit "B".

2.101 "**Parking Unit Owner**" means and refers to the Owner(s) from time-to-time of a Parking Unit.

2.102 "**Person**" means any natural individual, corporation, limited liability company, governmental agency, business trust, estate, trust, trustee, partnership, association, sole proprietorship, joint venture, two or more Persons having a joint or common interest, or any other legal entity or legally recognized form of ownership.

2.103 "**Plaza Unit**" means the Unit designated as "*Plaza Unit*" on the Community Map and Exhibit "B" including, without limitation, all Plaza Unit Improvements.

2.104 "**Plaza Unit Improvements**" means all pavers, snowmelt improvements, and/or related improvements located within the Plaza Unit.

2.105 "**Private Rooftop Equipment**" is defined in Section 4.5.3.

2.106 "**PUD Approvals**" means all of the Town Council final land use and planned unit development resolutions, and resulting development agreement approvals, instruments and documents for the Community and Real Property including, without limitation: (i) the Final PUD Plans set forth in Town Council Resolutions recorded

in the Official Records at Reception Nos. 366172, 379630 and 384748; and (ii) the PUD Development Agreement recorded at Reception No. 379631 in the Official Records and all amendments thereto.

2.107 "**Qualified Rental Program**" means those third-party rental programs qualified by the Association Board and who provide Hotel Marketing Services to the Owners of Residence Condominium or Hotel Condominium Units they manage pursuant to a rental management agreement. Qualified Rental Programs are required to (i) be registered to do business in the State of Colorado; (ii) have all business license(s) required by the Town of Mountain Village; (iii) be current in the payment of applicable taxes to the Town of Mountain Village, San Miguel County and the State of Colorado; (iv) have an physical office located in or near the Town of Mountain Village, Colorado; (v) have a dedicated telephone number for Owners and guests to utilize that is a local or toll free call; (vi) have experience managing rental units of at least four stars in quality rating; (vii) other rental units under management by the Qualified Rental Program meet at least a four star quality rating; and (vii) both Owner and the Qualified Rental Program have personal injury liability insurance at a minimum amount of one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) in the aggregate or at such higher amounts as may be required by the Board. Notwithstanding the foregoing, Residence Condominium and Hotel Condominium Unit Owners shall not be precluded from directly renting the Owner's Unit to a guest or from utilizing rental services such as VRBO, HomeAway, Flip Key or similar rental services under which the Owner is directly renting the Owner's Unit to a guest.

2.108 "**Real Property**" means the real property and all appurtenant easements and other real property rights, all located in the Town and County and more particularly described in Exhibit "A" attached hereto.

2.109 "**Regular Assessments**" means a share of the funds required for the payment of Common Expenses, including Limited Common Expenses, that from time-to-time is assessed by the Association against a Unit, the amount of which is determined by such Unit's Allocated Common Expenses and Voting Interests.

2.110 "**Requesting Owner**" is defined in Section 8.1.3.

2.111 "**Required Coverages**" is defined in Section 16.1.

2.112 "**Reserved Unit Improvement Rights**" is defined in Section 7.2.1.

2.113 "**Residence Condominiums**" means the 60 Units labeled or designated as "*Residence Condominiums*" or "*Residential Condominiums*" on the Community Map and Exhibit "B".

2.114 "**Residence Condominium Unit Owner**" means and refers to the Owner(s) from time-to-time of a Residence Condominium Unit.

2.115 "**Restated Declaration**" means this instrument as defined in the introductory paragraph hereto, together with all attached exhibits, as any of these may be amended from time-to-time.

2.116 "**Retail Condominiums**" means the 10 Units designated as "*Retail Condominiums*" on the Community Map and **Exhibit "B"**. References herein to "*Commercial Units*" shall include Retail Condominiums, unless the context prohibits or it otherwise is expressly provided.

2.117 "**Shared Annual Budgets**" is defined in Section 13.2.

2.118 "**Shared Facilities**" means those portions of the Hotel Unit (including all equipment and facilities related thereto) that are intended (as established or determined by the Hotel Unit Owner from time-to-time), on a limited basis, to serve, be enjoyed by and/or benefit, some or all of the Units, all as set forth in this Restated Declaration and on the Community Map. Shared Facilities are owned, managed and controlled exclusively by the Hotel Unit Owner. The term "*Shared Facilities*" shall consist of the: (i) General Shared Facilities; (ii) Hotel Shared Facilities; and (iii) Parking Shared Facilities.

2.119 "**Shared Facilities Allocations**" is defined in Section 13.3 and are set forth in **Exhibit "C"**.

2.120 "**Shared Facilities Easements**" is defined in Section 12.1. The Shared Facilities Easements consist of the: (a) General Shared Facilities Easements; and (ii) Hotel Shared Facilities Easements.

2.121 "**Shared Facilities Expenses**" are those defined in Section 13.1.

2.122 "**Shared Facilities Records**" are defined in Section 13.6.

2.123 "**Shared Facilities Rules and Regulations**" means the rules and regulations of the Shared Facilities adopted by the Hotel Unit Owner and amended from time-to-time, if any. Any Shared Facilities Rules and Regulations, if any, shall not restrict, limit or otherwise impair the rights of the Hotel Unit Owner set forth in this Restated Declaration, without the prior written consent of the Hotel Unit Owner.

2.124 "**Special Assessments**" means Assessments representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the annually adopted budget for the Association and are not in the nature of capital improvements. The amount of each Unit's respective obligation for a Special Assessments is determined by such Unit's Voting Interests.

2.125 "**Stairways**" means any stairways, stair landings, and/or escalators, but excluding any located within (i) a Unit (other than the Hotel Unit) and (ii) the Non-Shared Facilities portions of the Hotel Unit.

2.126 "**Standards**" means the standards for maintenance and operation of the Hotel and/or provision of the Hotel Services, which shall be established and/or modified from time-to-time by the Hotel Unit Owner, unless a Hotel Operator has been retained, in which event the Standards shall be those established and/or modified from time-to-time by the Hotel Operator as approved by the Hotel Unit Owner.

2.127 "**Telephone and Telecommunications Systems**" means (i) the Community's central telephone system, which system may (in Hotel Unit Owner's sole and absolute discretion from time-to-time and without any obligation) provide for telephone operator service, routing, message service, wake-up call service, room service connections and/or outside operator connections to Units, and (ii) the Community's telecommunication system, which system may (in Hotel Unit Owner's sole and absolute discretion from time-to-time and without any obligation) provide for internet connection, cable television, premium programming, resort services and/or pay per view services to Units, all as modified or changed from time-to-time (as determined by Hotel Unit Owner in its sole and absolute discretion).

2.128 "**Third-Party Providers**" is defined in Section 12.5.

2.129 "**Time Sharing Plan**" is defined in Section 10.11.

2.130 "**Town**" means the Town of Mountain Village, Colorado, a Colorado home rule municipality located in the County.

2.131 "**Town Improvements**" means the Civic Condominiums, the Ice Rink Unit, the Plaza Unit, and the Town Parking Condominium which are open to use by the general public.

2.132 "**Town Parking Condominium**" means the Unit designated as the "*Town Parking Condominium*" or "*TPC*" on the Community Map and **Exhibit "B"**. References herein to "*Parking Units*" shall include the Town Parking Condominium, unless the context prohibits or it is otherwise expressly provided.

2.133 "**Town Parking Maintenance Areas**" means (i) the Town Parking Condominium; and (ii) all Parking Shared Facilities located adjacent to the Town Parking Condominium, as depicted on **Exhibit "D"**.

2.134 "**Town Requirements**" means the land use and related requirements, obligations and/or restrictions imposed by the Town and/or other local authorities and/or entities on the Hotel Unit Owner, the Real Property and/or the Community. The "*Town Requirements*" shall include, without limitation, all employee housing, short-term hotel accommodations, underground parking, municipal and other civic facilities and the construction,

sale, maintenance, operational and other obligations imposed on the Hotel Unit Owner and/or the Community (both recorded and unrecorded), in connection with the replatting, entitlement, development, building, land use and related Town approvals and regulations affecting the Real Property, Community and Hotel Unit Owner. Specifically, the "*Town Requirements*" include, without limitation, all requirements contained in (i) the PUD Approvals; (ii) the Hotel Deed Restriction; (iii) the Hotel Condominiums Reconfiguration Restrictions; (iv) Employee Housing Deed Restriction; and (v) the Parking Management Agreement.

2.135 "**Unit**" means (i) that part of the Community Property which is subject to exclusive ownership, together with (ii) all appurtenances, as set forth herein. Except where specifically excluded, or the context otherwise requires, reference to a Unit or Units shall be deemed to include the Residence Condominium Units, Employee Condominium Units, Hotel Condominium Units, Retail Condominium Units, Civic Condominium Units, the Town Parking Condominium Unit, the Individual Parking Units, the Plaza Unit, the Ice Rink Unit, and the Hotel Unit. A list and description of the Units is set forth in Exhibit "B" attached hereto.

2.136 "**Valet Parking Obligations**" is defined in Section 14.5.

2.137 "**Voting Interests**" is defined in Section 5.3.

## ARTICLE 3
## DESCRIPTION OF THE COMMUNITY

3.1 **Identification of Units**. As of the Effective Date, the Community contains a total of **215** Units, consisting of:

(i) 60 Residence Condominium Units;

(ii) 100 Hotel Condominium Units;

(iii) 10 Employee Condominium Units;

(iv) 12 Civic Condominium Units;

(v) 10 Retail Condominium Units;

(vi) 19 Individual Parking Condominiums;

(vii) 1 Hotel Unit;

(viii) 1 Town Parking Condominium Unit;

(ix) 1 Plaza Unit; and

(x) 1 Ice Rink Unit.

Each Unit is identified by a separate numerical or alpha-numerical designation, which is set forth on the Community Map and **Exhibit "B"**. Each Unit and its appurtenances constitute a separate parcel of real property, owned and separately alienable in fee simple. Each Unit may be conveyed, transferred, and encumbered like any other parcel of real property, independently of all other parts of the Community Property, subject to the provisions of this Restated Declaration and applicable law. Each Unit (except as set forth in Section 5.2) shall have, as appurtenances thereto: (a) an undivided share in the Common Elements and any common surplus of the Association; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Restated Declaration; (c) membership in the Association with the full voting rights appurtenant thereto; and (d) other appurtenances, easements and rights set forth in this Restated Declaration.

3.2 **Unit Boundaries**. The following are designated as boundaries of each Unit, as depicted on the Community Map:

3.2.1 **Boundaries of Residence Condominiums, Employee Condominiums, Hotel Condominiums and Commercial Units**. The boundaries of each Residence Condominium, Employee Condominium, Hotel Condominium and Commercial Unit shall be the following boundaries extended to their planar intersections with the perimeter boundaries:

3.2.1.1 **Upper Horizontal Boundaries**. The upper horizontal boundaries of each Residence Condominium, Employee Condominium, Hotel Condominium and Commercial Unit shall be the horizontal planes of the bottom surfaces of the dropped ceiling, if any, or, if none, the unfinished joists, extended to their planar intersections with the vertical perimeter boundaries. The upper horizontal boundary of the Ice Rink Unit shall be 15 vertical feet above the upper surface of the concrete located directly below the skating surface, as set forth on the Community Map.

3.2.1.2 **Lower Horizontal Boundaries**. The lower horizontal boundaries of the Residence Condominium, Employee Condominium, Hotel Condominium and Commercial Unit and Commercial Units shall be the horizontal planes of the unfinished surfaces of the concrete, gypcrete or plywood subflooring, extended to their planar intersections with the vertical perimeter boundaries. The lower horizontal boundary of the Ice Rink Unit shall be the upper surface of the concrete located directly below the skating surface, as set forth on the Community Map (constituting the lower surface of the ice rink facilities Improvements).

3.2.1.3 **Vertical Boundaries**. The vertical boundaries of each Residence Condominium, Employee Condominium, Hotel Condominium and Commercial Unit shall be (i) with respect to the exterior perimeter walls, the vertical planes of the finished exterior surfaces of the external Building walls bounding the Unit extended to their planar intersections with the upper and lower horizontal boundaries (excepting therefrom any exterior windows or doors, which shall constitute Limited Common Elements); and (ii) with respect to internal walls bounding hallways or other portions of the Hotel Unit or Limited Common Elements, the vertical planes of the unfinished exterior surfaces of the walls bounding the Unit, extending to their planar intersections with the upper and lower horizontal boundaries; and (iii) with respect to the internal walls separating Units, the center of the separation wall, extending to the planar intersections with the upper and lower horizontal boundaries.

3.2.2 **Boundaries of Parking Units**. The vertical boundaries of each Parking Unit shall be as set forth on the Community Map. The upper and lower horizontal boundaries of the Parking Units shall be the same as those set forth in Section 3.2.1.1 and 3.2.1.2, respectively, regarding Unit upper and lower boundaries.

3.2.3 **Boundaries of the Plaza Unit**. The lower horizontal boundary of the Plaza Unit shall be the horizontal plane of the unfinished upper concrete surface of the Garage Limited Common Elements located directly below the Plaza Unit Improvements. The upper horizontal boundary of the Plaza Unit shall be the lesser of (i) 15 vertical feet directly above the surface of the pavers located in the Plaza Unit, or (ii) the bottom surface of any other Unit or Common Element. The vertical boundaries of the Plaza Unit shall be as set forth on the Community Map.

3.2.4 **Boundaries of the Hotel Unit**. Generally, the Hotel Unit shall consist of all of the Community Property (including both the Shared Facilities and Non-Shared Facilities), less and except only the following: (i) Residence Condominiums; (ii) Hotel Condominiums; (iii) Employee Condominiums; (iv) Commercial Units; (v) Parking Units; (vi) Ice Rink Unit; (vii) Plaza Unit; and (viii) Common Elements.

3.2.5 **Life Safety Systems**. Notwithstanding anything contained in this Restated Declaration to the contrary, the Life Safety Systems, and the property and installations required for the furnishing of similar services to more than one Unit shall not be deemed to constitute any part of the Commercial Units, Parking Units, Residence Condominiums, Employee Condominiums, Hotel Condominiums, Ice Rink Unit, Plaza Unit or the Common Elements (regardless of location). Rather these shall be deemed to constitute a part of the Hotel Unit, and specifically part of the General Shared Facilities, as more fully described in Section 11.3.1. Similarly, no Shared Facilities or any other portion of the Hotel Unit shall be deemed to constitute any part of any other Unit or the Common Elements.

3.2.6 **The Community Map Controls**. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the Community Map shall control in determining the boundaries of a Unit.

3.3 **The Common Elements**.

3.3.1 **General Common Elements**. The "**General Common Elements**" shall consist of the following:

3.3.1.1 The horizontal portions of the Buildings lying above the upper Unit boundaries described in Section 3.2.1.1 and below the lower Unit boundaries described in Section 3.2.1.2, and all Improvements located therein, whether or not depicted on the Community Map (except as otherwise specified in this Restated Declaration);

3.3.1.2 The Common Elements Easement;

3.3.1.3 All Building Structural Elements including, without limitation, all Building Façades, but excluding any portions thereof which constitute Garage Limited Common Elements. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, NO BUILDING STRUCTURAL ELEMENTS CONTAINED IN THE BUILDINGS SHALL BE CONSIDERED PART OF ANY UNIT, BUT INSTEAD SHALL BE DEEMED COMMON ELEMENTS AND MAY NOT BE DISTURBED OR ALTERED WITHOUT THE PRIOR WRITTEN CONSENT OF THE BOARD; AS FURTHER SET FORTH IN SECTION 8.1.12; and

3.3.1.4 All supports and structural elements serving any platform, balcony, deck, or terrace including, without limitation, any snow-melt systems contained therein, whether or not depicted on the Community Map (the "**Deck Supports**").

3.3.2 **Limited Common Elements**. "**Limited Common Elements**" shall include, without limitation, (i) all utilities and utility lines, pipes, vents, chimneys, wires, circuits, conduits, meters, facilities and systems for the benefit of and/or serving only one Unit, or any part thereof (including, without limitation, water, sewer, gas, telephone, internet, electricity, cable TV and other master TV and communication systems, if any); (ii) all entry, exterior and common hallway doors and windows providing access to or from any Unit; and (iii) all platform, balcony, deck, terrace and other areas identified on the Community Map as a "*Limited Common Element*" or "*LCE*", for the benefit of and/or serving only those Unit(s). All such Limited Common Elements shall be deemed to be inseparable appurtenances to the respective allocated Unit, and no Unit shall be transferred, encumbered or conveyed in any manner, separate from such appurtenant Limited Common Elements.

## ARTICLE 4
## EASEMENTS

4.1 **The Association Easements**. The following easements are hereby created and granted and are in addition to any easements created under the Act, or elsewhere in this Restated Declaration, and/or any easements otherwise affecting the Community Property and recorded in the Official Records:

4.1.1 **The Association's Common Elements Easement**. A perpetual, non-exclusive easement (collectively, the "**Common Elements Easement**") is hereby created, granted and reserved in favor of the Owners and the Association and their respective agents, employees and assigns, in, on, over, across, through and under all Units and Limited Common Elements for purposes of (i) construction, installation, operation, maintenance, repair, removal and replacement of all General Common Elements including, without limitation, all Building Structural Elements within the Building Structural Elements Easement Areas and all Deck Supports (whether preventative and/or otherwise); (ii) staging and performing exterior window washing and/or exterior painting of the Buildings; and (iii) maintenance, repair, replacement or alteration of the exterior of the Buildings and/or other exterior repairs, replacements, alterations (whether preventative and/or otherwise).

4.1.1.1 This Common Elements Easement specifically shall include, without limitation, an easement for access, ingress and egress to accomplish such purposes, and together with the right to grant any such easement rights to utility companies and/or any other public service entities.

4.1.1.2 The Common Elements Easement further specifically shall include, without limitation, additional easement rights created, granted and reserved to the Association, its agents, employees and assigns in this Restated Declaration, for a perpetual, non-exclusive easement over, across, upon and under all portions of the Community Property, for purposes of enabling the Association to perform its various responsibilities and to exercise its various rights under this Restated Declaration.

4.1.1.3 The Association and/or other authorized Persons exercising such Common Elements Easement rights shall be obligated to restore, repair, repaint and/or replaster any disturbed areas or Improvements and/or portions of any affected Units to as close to the original condition as possible, and as promptly as possible following completion of any work undertaken pursuant to such easement rights.

4.1.1.4 The Association further shall be obligated to exercise the Common Elements Easement rights at such times and in such manner as to interfere as little as reasonably possible with the occupancy, use and/or enjoyment of the Units by the Owners and/or Occupants thereof.

4.1.2 **The Association Units Easement**. In addition to the Common Elements Easement, a perpetual, non-exclusive easement is hereby created, granted and reserved in favor of both the Owners and the Association and their respective agents, employees and assigns for the purpose of providing the right to enter upon all Units as necessary for the performance of the Association's rights and responsibilities under this Restated Declaration and for the making of repairs or reconstruction to any portion of (i) the Community Property; (ii) any structural or exterior elements of the Buildings and/or any related systems; and/or (iii) any utilities or related Improvements, to the extent that any of these should not otherwise be covered by the Common Elements Easement and/or be included within the Shared Facilities or Limited Common Elements (the "**Association Units Easement**"). For routine maintenance and non-emergency repairs, entry into a Unit pursuant to this Association Units Easement shall be made only on a regular business day during regular business hours, after giving at least one day's prior written notice to the Owner. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry pursuant to this Association Units Easement shall be made at any time without notice or permission. The Board is hereby granted the authority and power in connection with the exercise of the Association Units Easement to use such reasonable force as may be necessary under the circumstances to gain entry into a Unit in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damage to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and/or damage results from the willful act or negligence of an Owner or Occupant (in which event such Owner shall be solely responsible for the costs of repairing/restoring such damage with all related costs to be assessed as Reimbursement Assessments against the Owner and the Owner's affected Unit).

4.2 **The Hotel Unit Owner's Easements**. The Hotel Unit Owner (and its guests, tenants, invitees, designees, Affiliates, agents, employees, contractors, successors and assigns) is hereby granted a perpetual, non-exclusive easement on, over, through and across all portions of the Community Property for the purpose of performing such functions as are permitted or required to be performed by the Hotel Unit Owner under the Community Documents.

4.3 **Owners' Encroachment Easements**. Each Owner is hereby granted a perpetual, non-exclusive easement upon an adjoining Unit or other portion of the Community Property for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting or movement of the Building, or any other similar cause. Such easements for the maintenance of said encroachments shall continue so long as such encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachments occur due to the willful misconduct of an Owner. In the event a structure is partially or totally destroyed, and then repaired or rebuilt in substantially the same manner as originally constructed, the Owners agree that minor encroachments upon an abutting Unit or other portion of the Community Property shall be permitted and that there shall be valid easements for the maintenance of said encroachments so

long as they shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Restated Declaration or of deeds, mortgages, deeds of trust or other security instruments relating to Units, the actual location of a Unit shall be conclusively deemed to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Community Map.

4.4 **Common Unit Entrance Area Access Easement**. In areas of the Community where (i) two or more Units are accessed by a common doorway/entrance area (a "**Common Unit Entrance Area**"); and (ii) any part of such Common Unit Entrance Area is contained within the boundaries of a Unit, each Owner and Occupant of a Unit serviced by such Common Unit Entrance Area, is granted a perpetual, non-exclusive access easement over all portions of such Common Unit Entrance Area contained within the boundaries of another Owner's Unit is hereby created, granted and reserved, for the specific limited purpose of ingress to and egress from the Owner's Unit (a "**Common Unit Entrance Area Access Easement**"). All costs associated with the maintenance, replacement, or repair of a Common Unit Entrance Area shall be split equally among all Owners of the Units serviced by such Common Unit Entrance Area. Further, no maintenance, replacement, or repair of a Common Unit Entrance Area shall be undertaken without the prior consent of all Owners serviced by such Common Unit Entrance Area and the Board. The foregoing notwithstanding, the Board, in its sole and absolute discretion, shall be the final arbiter of all disputes between Owners serviced by a Common Unit Entrance Area regarding use of a Common Unit Entrance Area Access Easement and/or the maintenance, replacement, or repair of a Common Unit Entrance Area.

4.5 **General Easements**.

4.5.1 **Pedestrian Easements**. A perpetual, non-exclusive easement is hereby created, granted and reserved in favor of the Association and each Owner and Occupant (and their respective guests, invitees, designees, agents, employees and contractors) for pedestrian traffic over, through and across any and all portions of the Common Elements, the Plaza Unit, and/or the Shared Facilities portions of the Hotel Unit that are intended to provide direct pedestrian access to and from the public street to any applicable Unit.

4.5.2 **Easements for Support and Necessity**. A perpetual, non-exclusive easement is hereby created, granted and reserved over each portion of the Community Property in favor of the Association and the Owners for purposes of support and of necessity in favor of every other portion of the Community Property, and the various Owners thereof (including the Association).

4.5.3 **Private Rooftop Equipment Easement**. A perpetual, non-exclusive easement is hereby created, granted and reserved in favor of the Hotel Unit Owner and its contractors, agents, designees and assigns over, across, upon and under all Common Elements and/or Units to allow the Hotel Unit Owner to install mechanical equipment, antennas, dishes, receiving, transmitting, monitoring and/or other equipment or items that the Hotel Unit Owner may elect to install whether for itself or any third party (including Persons who are not Owners) upon and/or in the Building Roofs and Attic Spaces ("**Private Rooftop Equipment**"). Without limiting the generality of the foregoing, this easement shall exist over, through and across the Units and the Community Property as may be necessary for (i) access to the Building Roofs and Attic Spaces, and/or connection of the Private Rooftop Equipment to the utility systems within the Community; and/or (ii) the installation, maintenance, repair, replacement and/or alteration of the Private Rooftop Equipment.

4.5.4 **Emergency Services Easement**. A perpetual, non-exclusive emergency services easement is hereby created, granted and reserved in favor of the Association and the Owners and Occupants of the Units for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons now or hereafter serving the Community and its Owners and Occupants in, on, over, upon, along and across all the Community Property, for use in the lawful performance of these emergency service provider's duties.

4.6 **Shared Facilities Easements**. The Shared Facilities Easements, as more particular described in Section 12.1 below.

4.7 **Building Structural Easements**. A perpetual, non-exclusive easement is hereby created, granted and reserved in favor of the Association and Hotel Unit Owner and their contractors, agents, designees

and assigns over, across, upon and under all Building Structural Easement Areas as shown on the Community Map to allow the Association and Hotel Unit Owner to maintain and repair the Building Structural Elements.

## ARTICLE 5
## COMMON EXPENSES; ALLOCATED INTERESTS AND VOTING RIGHTS

5.1 **Allocation of Ownership of Common Elements**. Each Unit is allocated an undivided percentage ownership interest in the Common Elements as tenants-in-common, based on the approximate total square footage of each Unit in uniform relationship to the approximate total square footage of all other Units in the Community ("**Allocated Interests**") as set forth in **Exhibit "B"**, under the label "*Allocated Interests*".

5.2 **Allocation of Common Expenses and Voting Rights**. Each Unit (except for the Plaza Unit, Ice Rink Unit and Town Parking Condominium) is allocated a percentage share of (i) the Common Expenses of the Association; and (ii) the voting rights in Association matters ("**Allocated Common Expenses and Voting Interests**"). The Allocated Common Expenses and Voting Interests are allocated to each Unit based on the approximate total square footage of each Unit in uniform relationship to the approximate total square footage of all other Units in the Community (except for square footage of the Plaza Unit, Ice Rink Unit and Town Parking Condominium), all as set forth in **Exhibit "B"**, under the label "*Allocated Common Expenses & Voting Interests*."

5.2.1 In connection with the foregoing, all Owners hereby expressly acknowledge and accept that the Town Requirements mandate that the Town Parking Condominium, the Plaza Unit, and the Ice Rink Unit, shall be public amenities and therefore are treated uniquely in this Restated Declaration. Specifically, the Town Requirements require that the Town Parking Condominium, the Plaza Unit, and the Ice Rink Unit be owned by the Town free and clear of any Community-related costs and/or obligations greater than would be required for ownership and/or operation of similar public amenities elsewhere in the Town outside of the Community and the Town is solely responsible for the costs of operation, maintenance, insurance, repair and replacement of the Town Parking Condominium, Plaza Unit and Ice Rink Unit.

5.2.1.1 Accordingly, all Owners hereby acknowledge and accept that, due to the Town's ownership of Town Parking Condominium, the Plaza Unit, and the Ice Rink Unit as "public improvements" and the Town's obligation to operate, maintain, insure, repair and replace those Units at the sole cost and expense of the Town, it is appropriate to (i) exempt those Units from the payment of Assessments or any share of Common Expenses; and (ii) correspondingly allocate no Voting Interests to these Units. The Town Parking Condominium, the Plaza Unit and the Ice Rink Unit are not assessed any Assessments or any Shared Facilities Expenses. The Town Parking Condominium maintenance obligations and cost allocations are set forth in ARTICLE 14. The provisions of this Section 5.2 related to the Town Parking Condominium, the Plaza Unit, and the Ice Rink Unit shall not be amended without the prior written consent of the Town.

5.3 **Voting**. Each Unit (except the Town Parking Condominium, the Plaza Unit, and the Ice Rink Unit) shall be entitled to one vote to be cast by its Owner(s), in their capacity as a Member(s) of the Association in all Association matters, in accordance with the provisions of the Articles, the Bylaws and this Restated Declaration, with each such vote carrying the voting power and interest equal to the Unit's Allocated Common Expenses and Voting Interests as set forth in **Exhibit "B"** ("**Voting Interests**").

5.4 **Restraint on Alienation of Allocated Interests**. The Allocated Interests of a particular Unit, the Allocated Common Expenses and Voting Interests of a particular Unit, and an Owner's exclusive right to use all appurtenant Limited Common Elements, shall not be separated from such Unit or otherwise conveyed or encumbered except together with such Unit. Every Unit's Allocated Interests, Allocated Common Expenses and Voting Interests and right to appurtenant Limited Common Elements (if any) shall pass with the title to the Unit, whether or not separately described. No action for partition of the Common Elements, the Community Property, or any part thereof, shall lie, except as provided in this Restated Declaration with respect to termination of the Community.

## ARTICLE 6
## MAINTENANCE, REPAIRS AND REPLACEMENT

6.1 **Maintenance, Repairs and Replacement of the Units**.

6.1.1 Except as otherwise provided in this Restated Declaration, each Owner shall perform, at the Owner's sole cost and expense, all actions necessary to maintain, repair and replace the interior of the Unit and all fixtures within the Unit, all in accordance with the Standards. These Owner maintenance, repair and replacement obligations shall include, without limitation, the cleaning, care, operation, maintenance, repair and replacement of all (i) interior surfaces, including all interior surfaces of the walls of the Unit (provided, however, that the Board's consent shall be required prior to making any repairs, alterations or replacements to any to any portion of the Unit affecting any Building Structural Elements, and the Hotel Unit Owner's consent shall be required prior to making any repairs, alterations or replacements to any interior non-structural wall that contains pipes, conduits or other components constituting any part of the Hotel Unit); (ii) window, wall and floor coverings within the Unit; (iii) interior doors, door frames and trim; (iv) electrical fixtures, wires and outlets within the Unit that serve only the Unit; (v) plumbing improvements (including pipes, fixtures and connections) within the Unit that serve only the Unit; and (vi) appliances within the Unit.

6.1.2 Each Owner shall be responsible for the cleaning, care and maintenance of the following items that, although they may constitute Limited Common Elements, exclusively serve such Owner's Unit: (i) the interior surfaces of all windows and sliding glass doors; and (ii) the interior side of all exterior doors leading to and from the Unit or any Limited Common Elements. (Exterior window cleaning shall be performed solely by the Association and shall be charged as a Common Expense or a Limited Common Expense, as applicable.)

6.1.3 Nothing contained in this Section 7.1 shall entitle any Owners to alter, repair or perform any work on (i) any of portion of the Community, (without the prior written approval of the Board (which approval may be granted or withheld in the Board's sole and absolute discretion); or (ii) any portion of the Hotel Unit, without the prior written approval of both the Board and the Hotel Unit Owner (which approvals also may be granted or withheld, in either or both the Hotel Unit Owner's and/or the Board's sole and absolute discretion).

6.2 **Common Elements**. Except as otherwise specified in this Restated Declaration (including, without limitation, in Section 6.1), the Association shall perform all structural and/or major capital maintenance, repairs and replacement of all Common Elements and Association Property, specifically including (without limitation) all (i) Limited Common Elements (including all decks, balconies and external doors and windows for Residential and Commercial Units, but excluding the Garage Ramp/Tunnel, which shall be maintained, repair and replaced pursuant to ARTICLE 14); and (ii) all Building Structural Elements, as direct by the Board, in accordance with the Standards and the Town Requirements. The cost and expenses associated with all such structural and/or major capital maintenance, repairs and/or replacements shall constitute Common Expenses, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Owners (in which case such cost and expense shall be assessed solely against such Owners as Reimbursement Assessments). The costs and expenses associated with such structural and/or major capital maintenance, repairs and/or replacements of any Limited Common Elements shall be allocated proportionately only to those Unit(s) to which the affected Limited Common Elements are appurtenant.

6.3 **The Shared Facilities**. All maintenance, repairs and replacements of the Shared Facilities (except for the Parking Shared Facilities, which shall be maintained, repaired and replaced pursuant to ARTICLE 14 below) shall be performed by the Hotel Unit Owner, the cost and expense for which shall be Shared Facilities Expenses in accordance with ARTICLE 13 below, except to the extent such cost and expense arises from, or is necessitated by, the negligence, misuse or neglect of specific Owners, in which case such cost and expense shall be assessed solely against such Owners in the same manner as Reimbursement Assessments.

6.4 **The Parking Facilities and Garage Ramp/Tunnel**. The Parking Facilities, including the Parking Shared Facilities and the Garage Ramp/Tunnel shall be operated, maintained, repaired and replaced as set forth in ARTICLE 14 below.

6.5 **Standards for Maintenance, Repairs and Replacement**. Notwithstanding anything to the contrary in this Restated Declaration, any and all maintenance obligations of either the Association or an Owner must be undertaken in such a manner to assure that the Community Property is kept and maintained in a condition that (i) meets or exceeds the Standards; and (ii) does not cause any other portions of the Community Property to fail to meet the Standards.

## ARTICLE 7
## ADDITIONS, ALTERATIONS OR IMPROVEMENTS

7.1 **Improvements, Additions or Alterations by Owners other than the Hotel Unit Owner**.

7.1.1 No Owner shall make any addition, alteration or improvement in or to the Common Elements, except in strict compliance with this ARTICLE 7 and all other provisions of the Community Documents and the Town Requirements. Specifically, insofar as the Town Requirements (and specifically the Hotel Condominiums Reconfiguration Restrictions) prohibit any changes in the configurations of the Hotel Condominiums, no such changes shall be allowed without the prior written approval of the Town.

7.1.2 Without the prior written approval of both the Board and the Hotel Unit Owner, no Owner (other than the Hotel Unit Owner) shall make any addition, alteration or improvement to any Unit that may (i) alter, modify and/or otherwise materially adversely impact any Community Property (including, without limitation, other Units, in which event prior written approval of the Owner(s) of the affected Unit(s) shall also be required); (ii) alter, modify and/or otherwise materially adversely impact the coordinated or uniform exterior of any Building (including, without limitation, the Building Façades, the Building's uniform windows, exterior lighting scheme, exterior doors and/or other exterior surfaces); or (iii) readily be visible from any other Unit, the Common Elements, or the exterior of any Building (collectively, "**Owner's Unit Work**"). The Owner's Unit Work specifically shall include any and all Commercial Unit signage, window signage, displays and/or treatments that may be visible from the exterior of any Buildings and/or outside of the affected Units.

7.1.3 In the event that an Owner (other than the Hotel Unit Owner) should desire to undertake any Owner's Unit Work, then the Owner so proposing the Owner's Unit Work (the "**Requesting Owner**") shall submit to both the Board and the Hotel Unit Owner a written request describing the proposed Owner's Unit Work, together with such plans, specifications, drawings, contracts and/or other information as shall be reasonably adequate to fully describe and depict the proposed Owner's Unit Work (collectively, the "**Owner's Work Proposal**").

7.1.4 Within 30 days after receiving and acknowledging the Owner's Work Proposal, both the Board and the Hotel Unit Owner shall either (i) approve or deny in writing the proposed Owner's Unit Work, pursuant to the Owner's Work Proposal (the "**Owner's Work Approval/Denial**"), or (ii) request in writing such additional information as the Board and/or the Hotel Unit Owner (in each of their respective sole and absolute discretion) shall deem appropriate and/or necessary to fully understand and/or review the Owner's Work Proposal. Failure by both the Board and the Hotel Unit Owner to either provide the Owner's Work Approval/Denial or either of the Board or the Hotel Unit Owner to request additional information within the 30-day period following receipt of the Owner's Work Proposal shall result in the Owner's Work Proposal being deemed to have been approved, thereby allowing the Requesting Owner to undertake the Owner's Unit Work, in strict conformance with the Owner's Work Proposal.

7.1.5 Once the Owner's Work Proposal has been approved or deemed approved by both the Board and the Hotel Unit Owner, pursuant to this Section 7.1, (but not before), the Requesting Owner shall be entitled to pursue the Owner's Unit Work, and such approval may not be revoked (except in the event the Requesting Owner submitted false or misleading information), so long as such Owner's Unit Work complies fully with (i) the terms of the Owner's Work Proposal; (ii) the Community Documents; (iii) all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction (including the Town Requirements); (iv) the Standards; and (v) any conditions imposed by the Board and/or the Hotel Unit Owner including, without limitation, any conditions imposed with respect to design, structural integrity, aesthetic appeal, construction details, lien protection, or otherwise.

7.1.6 In addition to the foregoing, no Owner's Unit Work shall be undertaken or allowed in connection with a Unit currently improved as a handicap Unit that involves any additions, alterations or changes, of any kind whatsoever, that would adversely impact or alter improvements required for handicap accessibility and/or compliance with (i) applicable laws regarding handicap access to that Unit; (ii) any Town Requirements; and/or (iii) for purposes of the Community generally.

7.1.7 In addition to any restrictions imposed on Owners by the Hotel Unit Owner, pursuant to Section 7.3, the Board shall have the right to establish from time-to-time restrictions on any and all Persons performing construction work on or about the Community Property in connection with any Owner's Unit Work. Such restrictions must, at all times, comply with both the Town Requirements and the Standards and include, without limitation, (i) restrictions on the hours during which such Owner's Unit Work may be performed; (ii) restrictions on access of contractors to certain areas; (iii) requirements that all Persons performing any such Owner's Unit Work have all necessary licenses and permits to perform the Owner's Unit Work; (iv) requirements that all Persons performing any such Owner's Unit Work have adequate insurance coverage of the type and amount as determined solely by the Board (in good faith consultation with the Hotel Unit Owner);(v) and that the Association, the Hotel Unit Owner, and Hotel Operator shall be named as additional insured Parties on such policy(ies) (which also must include waivers of subrogation by insurers); (vi) the requirement that all Owners must provide (no less often than annually) certificates of insurance evidencing that all required insurance coverages are in effect and specifying that such insurance cannot be cancelled without at least 30 days' advance written notice to the Association, the Hotel Unit Owner, and the Hotel Operator; and (vii) requirements for a security deposit or other collateral to protect against damage that may be caused to any Community Property and/or in connection with any violations of applicable laws and/or regulations, the Town Requirements and/or the Standards during the course of such Owner's Unit Work.

7.1.8 Any Requesting Owner undertaking any Owner's Unit Work pursuant to this Section 7.1 shall be solely responsible for (i) the maintenance, repair and insurance related to such Owner's Unit Work; and (ii) all damage caused to any Community Property (including, without limitation, other Units) in any way related to the Owner's Unit Work.

7.1.9 Neither the Board nor the Hotel Unit Owner shall bear any responsibility for reviewing or failing to review (nor shall its review of any materials submitted as part of the Owner's Work Proposal be deemed to constitute any approval of), any portion of the Owner's Work Proposal or the Owner's Unit Work from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with any governmental requirements, of any kind whatsoever (including Town Requirements). Rather, the sole responsibility for such compliance shall rest exclusively with the Owner(s). Additionally, the respective rights of the Board and/or the Hotel Unit Owner to review and/or approve the Owner's Work Proposal (and/or any other plans or submissions under the Community Documents) shall benefit only the Association and the Hotel Unit Owner, respectively, and no other Owners or any other Persons. Accordingly, neither the Association nor the Hotel Unit Owner (nor any of their respective officers, directors, employees, managers, agents, contractors, consultants or attorneys) shall bear or incur any liability (of any kind whatsoever) to any Owner or any other Person, by reason of any mistake in judgment, failure to point out or correct deficiencies, negligence, or any other act or omission arising out of, or in any manner connected with, any Owner's Work Approval/Denial relating to any plans or other submissions made with any Owner's Work Proposals, or otherwise.

7.1.10 As a result, each Owner (for such Owner, and his/her/its heirs, personal representatives, successors and assigns, as appropriate) understands and, by acceptance of the deed and/or other conveyance of title to his/her/its Unit, hereby covenants and agrees to and with the other Owners and the Association (and each of their respective officers, directors, employees, managers, agents, contractors, consultants and/or attorneys) that, with submission of any Owner's Work Proposal pursuant to this Section 7.1, the Owner covenants and agrees that he/she/it shall not seek, assert or pursue any claims or actions for damages and/or in equity with respect to, from or against either the Association or the Hotel Unit Owner (nor any of their respective officers, directors, employees, managers, agents, contractors, consultants or attorneys), as a result of any actions taken or omissions occurring with respect to either the Board's and/or the Hotel Unit Owner's review of any Owner's Work Proposal and/or related submissions made pursuant to this Section 7.1.

7.1.11 By acceptance of the deed and/or other conveyance of title to his/her/its Unit, each Owner (for such Owner, and his/her/its heirs, personal representatives, successors and assigns, as appropriate) hereby further understands, covenants and agrees to and with the other Owners, the Hotel Unit Owner and the Association (and each of their respective officers, directors, employees, managers, agents, contractors, consultants and/or attorneys) that, in connection with undertaking any Owner's Unit Work pursuant to this Section 7.1 the Requesting Owner shall hold the Association, the Hotel Unit Owner, and all other Owners (and each of their respective officers, directors, employees, managers, agents, contractors, consultants and/or attorneys), harmless and shall indemnify and defend them from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, attorneys' fees and court costs at all trial and appellate levels) arising out of, or in any way related to (i) any reviews or actions taken in connection with the Owner's Work Proposal and/or the Owner's Unit Work; and/or (ii) the installation and/or maintenance of (and/or failure subsequently to maintain, repair or replace), any addition, alteration or improvement, of any kind whatsoever including (without limitation) any such matters relating to the Owner's Unit Work.

7.1.12 By acceptance of the deed and/or other conveyance of title to his/her/its Unit, each Owner (for such Owner, and his/her/its heirs, personal representatives, successors and assigns, as appropriate) hereby further understands, covenants and agrees to and with the other Owners and the Association (and each of their respective officers, directors, employees, managers, agents, contractors, consultants and/or attorneys) that the penetration of any Building Structural Elements may threaten the structural integrity of the Buildings. As a result, each Owner (for such Owner, and his/her/its heirs, personal representatives, successors and assigns, as appropriate) understands and, by acceptance of the deed and/or other conveyance of title to his/her/its Unit, hereby covenants and agrees, as follows: (i) inasmuch as the Buildings may be constructed with post tension wiring, absolutely no penetration shall be made to any Building Structural Elements or floor or ceiling slabs without the prior written consent of the Board (which consent may be withheld or granted, in the Board's sole and absolute discretion); and (ii) each Owner shall ensure that any Owner's Work Proposal submitted to the Board and the Hotel Unit Owner, pursuant to this Section 7.1, shall include adequate details and information to allow a complete and accurate review of the *"as-built"* plans and specifications for the Building to confirm the approximate location of any existing post tension wiring possibly impacted by any Owner's Unit Work. For this purpose, the Board and/or the Hotel Unit Owner shall use their reasonable efforts to maintain sets of the plans and specifications for the Buildings for review by each Owner, prior to any Owner's submission of an Owner's Work Proposal. In this connection, each Owner (for such Owner, and his/her/its heirs, personal representatives, successors and assigns, as appropriate) hereby releases the Association and/or the Hotel Unit Owner, each jointly and severally (and with respect to each of their respective contractors, architects, engineers and each of their officers, directors, shareholders, employees, agents and/or independent contractors) from and against any and all liability that may result from either (i) any penetration of any Building Structural Elements resulting from the Owner's specific Owner's Work Proposal and/or any resulting Owner's Unit Work; and (ii) any other work additions, alterations and/or improvements undertaken without compliance with the requirements of this Section 7.1.

7.2 **Improvements, Additions or Alterations to Units Owned by the Hotel Unit Owner.**

7.2.1 Notwithstanding anything contained in Section 7.1, the Hotel Unit Owner shall have the right (but not the obligation) to (i) expand, alter or add to all or any part of the Hotel Unit, including the Shared Facilities (subject to the limitations set forth in this Section 7.2 and the limitations relating to the Shared Facilities set forth in ARTICLE 11 below); and (ii) make alterations, additions and improvements (whether structural or non-structural, interior or exterior, and/or ordinary or extraordinary), in, to and/or upon any Unit owned by the Hotel Unit Owner (collectively, the "**Reserved Unit Improvement Rights**"). Subject to the Town Requirements, such Reserved Unit Improvement Rights shall be exercisable by the Hotel Unit Owner with respect to any Units owned by the Hotel Unit Owner (in its sole and absolute discretion), and shall require no action, consent or approval by either the Association or any other Owners. Subject only to the Town Requirements, these Reserved Unit Improvement Rights shall specifically include, without limitation, rights to (a) remove the walls, floors, ceilings and other structural portions of the Building; (b) change the layout or number of rooms; (c) alter the size and number of Units owned by the Hotel Unit Owner by combining separate Units into a single Unit, or subdividing Units, or otherwise (which Reserved Unit Improvement Rights shall be separate from, in addition to, and shall in no manner diminish or impair any separate, distinct and/or independent rights reserved to the Hotel Unit Owner in this Restated Declaration).

7.2.2 In the event that the Reserved Unit Improvement Rights described in Section 7.2.1 above shall be exercised by or on behalf of the Hotel Unit Owner, such that the size and dimensions of any Unit(s) are materially altered, the Allocated Interests and the Allocated Common Expenses and Voting Interests of the affected Units shall be reapportioned appropriately; provided, however, that (i) the Allocated Interests and the Allocated Common Expenses and Voting Interests of any Units (other than the affected Units owned by the Hotel Unit Owner) shall not be changed by reason thereof, unless the Owners of such other Units consent thereto; and (ii) in exercising these specific Reserved Unit Improvement Rights, the Hotel Unit Owner shall comply with the Act and all applicable laws, ordinances and regulations of all governmental authorities having jurisdiction, specifically including the Town.

7.2.3 In the event that the Reserved Unit Improvement Rights described in Section 7.2.1 above should be exercised by the Hotel Unit Owner, the Hotel Unit Owner may (i) relocate, alter and/or incorporate into the affected Units, Shared Facilities and/or Common Elements adjacent to or near the Hotel Unit and/or such other Units owned by the Hotel Unit Owner; and/or (ii) incorporate portions of such affected Units into the adjacent Common Elements and/or Shared Facilities, or portions thereof; provided, however, that no such relocation, alteration and/or incorporation shall materially adversely affect the market value or ordinary use of Units owned by Owners other than the Hotel Unit Owner.

7.2.4 Any amendment to this Restated Declaration and/or the Community Map required by a change made by the Hotel Unit Owner as a result of the exercise of a Reserved Unit Improvement Right may be effected without the need or right for any vote or consent of the Association or Owners (or their respective mortgagees), provided such action is taken by means of written approvals from the Hotel Unit Owner and in accordance with the Act.

7.2.5 Notwithstanding anything to the contrary contained in this Restated Declaration, each Owner recognizes and agrees that the Hotel Unit Owner, including through its agents and/or representatives, shall be permitted to install, repair, and/or maintain (and shall be permitted access to each Unit for purposes of installing, repairing, and/or maintaining) the Building Structural Elements.

7.2.6 The Reserved Unit Improvement Rights set forth regarding the Hotel Unit Owner in this Section 7.2, shall supplement and be in addition to all other reserved rights in favor of the Hotel Unit Owner and set forth in this Restated Declaration and nothing associated with these Reserved Unit Improvement Rights shall be deemed in any manner to limit, impair or diminish any of such other reserved rights.

7.3 **Improvements, Additions or Alterations of Units and/or Community Property Affecting the Hotel Unit**. No additions, alterations or improvements shall be made or undertaken by any Owner or the Association to any portions of the Community Property (including, without limitation, any Units and/or Common Elements) that would or could materially adversely impact any portion of the Hotel Unit, without the prior written approval of the Hotel Unit Owner.

## ARTICLE 8
## OPERATION OF THE COMMUNITY BY THE ASSOCIATION; POWERS AND DUTIES

8.1 **Powers and Duties**. The Association shall be the entity responsible for the operation, maintenance and repair of the Common Elements and the Community. The powers and duties of the Association shall include the following:

8.1.1 The affairs of the Association shall be governed by a Board of Directors in accordance with the Articles and Bylaws. The Association shall have all the powers and duties set forth in the Act and Nonprofit Act, Articles, Bylaws and this Restated Declaration.

8.1.2 The irrevocable right to have access to each Unit from time-to-time during reasonable hours, as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Community Property.

8.1.3 The power and duty to adopt and amend Annual Budgets, allocate Common Expenses and levy and collect Assessments and other charges against Owners.

8.1.4 The duty to maintain accounting records of the Association according to good accounting practices, which records shall be open to inspection by Owners or their authorized representatives at reasonable times upon prior request.

8.1.5 The power to lease, maintain, repair and replace any Community Property, including through the establishment and maintenance of capital and/or other replacement reserve funds.

8.1.6 The power (but not the obligation) to enter into agreements with the Hotel Unit Owner and Commercial Unit Owners, Hotel Operator and/or other Persons to acquire use rights for, or to provide services to, the Community and/or the Owners.

8.1.7 The power and authority (but not the obligation) to enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities outside of the boundaries of the Community. Any such interest shall be deemed Association Property and the expenses of any such interests, including (without limitation) rent, membership fees and operations fees, shall constitute Common Expenses and the Board may (in its sole and absolute discretion) impose covenants and restrictions concerning the use of such interests.

8.1.8 The power to contract for the management and/or conduct of Association affairs with respect to the Association Property, Community and Community Property by entering into a "**Management Agreement**" with the Association Manager to assist the Association in carrying out its powers and duties by performing functions including, without limitation, the submission of proposals, preparation of budgets, collection of Assessments, preparation of records, enforcement of Community Rules and Regulations (if any) and maintenance, repair, cleaning and replacement of Common Elements and/or other Association Property and/or Community Property, with such funds as shall be made available by the Association for such purposes. Any Management Agreement may be (i) a long-term agreement; (ii) entered into on any terms acceptable to the Board (in its sole and absolute discretion); (iii) entered into with the Hotel Unit Owner and/or the Hotel Operator. The Management Agreement must be in writing.

8.1.9 The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefore, mortgages and security interests in property owned by the Association, if any; provided, however, that such actions must be approved by a majority of the entire Board. Any expenses incurred in connection therewith shall be deemed Common Expenses.

8.1.10 The power to adopt and amend any Community Rules and Regulations, if any, through action of the Board, with or without Owner ratification.

8.1.11 The power to acquire, convey, lease and encumber real and personal property upon a majority vote of the Board. Any expenses incurred in connection therewith including, without limitation, acquisition expenses, ownership expenses (including, without limitation, the expense of making and carrying any mortgage related to such ownership), rental expenses, membership fees, taxes, any assessments (including, without limitation, Assessments), operation expenses and all other expenses shall constitute Common Expenses.

8.1.12 The power to determine whether a rental program qualifies as a "Qualified Rental Program" per the definition in Section 2.107.

8.1.13 All of the powers that a Colorado nonprofit corporation may exercise pursuant to the Community Documents and/or Colorado law including, without limitation, the Act and/or the Nonprofit Act.

8.1.14 The power to settle any litigation claims, actions and/or proceedings brought against and/or instituted by the Association. Such settlement powers shall include, without limitation, full rights to bind all Owners to the terms of any settlements, except with respect to any litigation, claims, actions and/or proceedings that

shall have been brought by the Association against the Hotel Unit Owner. In the event of settlement of such Hotel Owner claims, the Owners shall be bound by the terms of any Association settlement effected through the Board only in the event that the settlement terms are approved by Owners representing a majority of the Voting Interests attributable to Units other than the Hotel Unit.

8.1.15 In the event of a conflict between or among the provisions of any of the Community Documents, the term(s) contained in the following documents, in the following order, shall control: (i) this Restated Declaration; (iii) the Articles; (iv) the Bylaws; and (v) the Community Rules and Regulations (if any).

8.2 **Limitation upon Liability of Association**. Notwithstanding the duty of the Association to maintain and repair parts of the Common Elements, the Association shall not be liable to Owners, Occupants or any other Person for any personal injury, death, damage to person or property or any other liability based upon (i) any latent condition relating to any portion of the Community Property; (ii) any additions, alterations, improvements or other activities done by or on behalf of any Owner, regardless of whether or not these shall have been approved by the Association pursuant to Section 7.1; or (iii) the fact that the Association did not obtain, maintain or carry insurance with a certain deductible for any particular matter where either this Restated Declaration does not require such insurance, or the Association could not obtain such insurance at reasonable costs or on reasonable terms. Nothing in this Restated Declaration shall be deemed to (a) relieve the Association of its duty to exercise ordinary care in the undertaking of its responsibilities or (b) deprive the Owners of their right to sue the Association, should the Association negligently or willfully cause damage to the Owners' property.

8.3 **Acts of the Association**. Unless the approval or action of Owners and/or a specific percentage of the Board is otherwise specifically required by the Bylaws, this Restated Declaration or any other Community Documents or applicable law, all approvals or actions required or permitted to be given or taken by the Association or the Board shall be given or taken by a majority vote of the Board, without the consent of Owners, and the Board may so approve and act through the proper officers of the Association or the Board. When an approval or action of the Association or Board is permitted to be given or taken, such action or approval may be conditioned in any manner the Board deems appropriate, or the Board may refuse to take or give such action or approval altogether.

8.4 **Association Software/Hardware Technology**. In managing the Community and the Community Property, the Association shall utilize, at all times, software and hardware technology that are compatible with the Hotel Unit Owner's software and hardware technology utilized in the management of the Shared Facilities.

## ARTICLE 9
## COMMON EXPENSES; BUDGETS; ASSESSMENTS AND COLLECTION OF ASSESSMENTS

9.1 **Common Expenses**. The Association shall be responsible for the payment of all Common Expenses and Limited Common Expenses incurred by or on behalf of the Association pertaining to the Community and shall allocate the same to the Units in accordance with the Allocated Common Expenses and Voting Interests allocated to each Unit.

9.1.1 "**Common Expenses**" means the expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including all expenses incurred by the Association for any reason whatsoever in connection with any Association Property, Community Property or Common Elements, or the costs of any other item or service provided or performed by the Association pursuant to the Community Documents or in furtherance of the purposes of the Association and goals of the Community or in the discharge of any duties or powers of the Association. For all purposes of this Restated Declaration, Common Expenses shall include, but not be limited to: (a) any reserves required or otherwise established by the Association, regardless of when reserve funds are expended; (b) costs relating to insurance for Directors and/or officers; (c) the real or personal property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses incurred in connection with any Units leased by the Association; (d) any lease payments required under leases for mechanical equipment, including without limitation, leases for recycling equipment (if any); (e) costs of fire, windstorm, flood, liability and all other types of insurance with respect to the Common Elements, Association Property and/or the Association; (f) costs resulting from damage to the Common Elements or Association Property that are necessary to satisfy any deductible

and/or to effect repairs which are in excess of insurance proceeds received as a result of such damage; (g) any unpaid share of Common Expenses or Assessments extinguished by foreclosure or by deed in lieu of foreclosure; (h) all costs and expenses necessary to maintain the Common Elements and/or Association Property in accordance with the Standards; (i) all costs and expenses associated with the exercise of the Common Elements Easement and any other easements granted to the Association; (j) the costs of services or memberships provided to the Association for the benefit of some or all of the Units or Owners; and (k) costs, expenses and fees associated with any easements, including without limitation the Shared Facilities Easements.

9.1.2 **Limited Common Expenses**. If any of the Common Expenses are provided to one or more, but fewer than all of the Units, the Board shall have the authority and discretion to allocate such expenses to only those Units which are benefited by such expenses ("**Limited Common Expenses**"). Hotel Shared Facilities Expenses shall be allocated as Limited Common Expenses to only the Residence Condominium Units, Hotel Condominium Units and the Hotel Unit in accordance with the Shared Facilities Allocations. Common Expenses related to Limited Common Elements shall be assessed as Limited Common Expenses in accordance with the square footage of the Limited Common Elements allocated to each Unit. Costs incurred with respect to specific Limited Common Elements shall be allocated as Limited Common Expenses to the Unit to which the Limited Common Element is allocated. The Board shall have the power and authority to classify Common Expenses, and any portion thereof, as Limited Common Expenses.

9.2 **Assessments Obligation**. Each Owner, by acceptance of a deed to a Unit (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree to pay Assessments to the Association. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Unit against which each such Assessments are charged. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Restated Declaration) or demand, and without set-off or deduction of any kind or nature. Each Owner is liable for Assessments made against such Owner's Unit during the Owner's period of ownership of the Unit. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each person who was an Owner of such Unit at the time when the Assessments became due. Upon the transfer of title to a Unit, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

9.3 **Assessments Lien**.

9.3.1 The Association has a statutory lien pursuant to Section 38-33.3-316 of the Act on the Unit of an Owner for all Assessments levied against such Unit or fines imposed against such Unit's Owner from the time the Assessments or fine becomes due ("**Assessments Lien**"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Restated Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessments is payable in installments, the Association has an Assessments Lien for each installment from the time it becomes due, including the due date set by the Board's acceleration of installment obligations.

9.3.2 This Section 9.3.2 does not preclude the Association from (i) instituting an action or suit to otherwise recover the sums secured by the Assessments Lien; or (ii) taking a deed in lieu of foreclosure from the defaulting Owner.

9.3.3 An Assessments Lien is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of Assessments becomes due.

9.3.4 The recording of this Restated Declaration constitutes record notice and perfection of the Assessments Lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be included within the Assessments Lien.

9.4 **Priority of Lien**. An Assessments Lien is prior to all other liens and encumbrances on a Unit except as follows:

9.4.1 Liens and encumbrances recorded before the recordation of the Original Declaration;

9.4.2 A security interest on the Unit that has priority over all other security interests on the Unit and that was recorded before the date on which the Assessments sought to be enforced became delinquent. An Assessments Lien is prior to the security interest described in the preceding sentence to only the extent mandated by law (currently specified under the Act as an amount equal to the Regular Assessments that would have become due, in the absence of any acceleration, during the six months immediately preceding institution, by the Association or any party holding a lien senior to any part of the Assessments Lien, of an action or a non-judicial foreclosure either to enforce or to extinguish such lien);

9.4.3 Liens for real estate taxes and other governmental assessments or charges against the Unit; and

9.4.4 As may otherwise be set forth in the Act.

9.5 **Budget/Regular Assessments**.

9.5.1 The Board shall from time-to-time, and at least annually, prepare, or cause to be prepared, an annual budget ("**Annual Budget**") for the Association, which Annual Budget shall detail the Common Expenses, including Limited Common Expenses, and determine, or cause to be determined, the amount of Regular Assessments attributable to each Unit in accordance with the provisions of this Restated Declaration and the Bylaws.

9.5.2 In accordance with the Act, within thirty (30) days after the Board's adoption of an Annual Budget, the Board shall (i) deliver a copy of the Annual Budget to each of the Owners and, if requested in writing, to their respective mortgagees; and (ii) schedule a meeting of the Owners to consider the Annual Budget to be held not less than fourteen (14) nor more than sixty (60) days after the Board's adoption of the Annual Budget. The Annual Budget adopted by the Board shall be deemed ratified, unless at the meeting of the Owners at which the Annual Budget is consider, Owners holding at least 51% of all the Voting Interests reject the Annual Budget adopted by the Board. In the event that the Annual Budget is not ratified by the Owners, the Annual Budget last ratified by the Owners will remain in effect (as shall be adjusted to reflect any increase in the Consumer Price Index for the Denver-Boulder-Greeley region from the previous calendar year) until such time as the Owners ratify a subsequent Annual Budget pursuant to this Section.

9.6 **Special Assessments**. If the Regular Assessments collected or to be collected for a particular fiscal year are, or will be, inadequate to meet all expenses incurred by the Association hereunder for any reason, including, without limitation, nonpayment by Owners of any Regular Assessments, the Board shall immediately determine the approximate amount of such inadequacy and prepare and distribute a supplemental Association Budget and allocate and levy a "**Special Assessment**" against each Unit (in accordance with the Allocated Common Expenses and Voting Interests). Special Assessments shall be payable in one lump sum or periodically, as determined by the Board. Notwithstanding the foregoing, a Special Assessment in an amount that exceeds five percent (5%) of the budgeted gross expenses of the Association for such fiscal year in which the Special Assessment is levied must be approved by 51% of the Owners of Units, other than Units owned by the Hotel Unit Owner. Special Assessments in an amount that is equal to or less than five percent (5%) of the budgeted gross expenses of the Association for such fiscal year in which the Special Assessment is levied may be approved by the Board. Special Assessments shall constitute obligations of the Owners, as well as creating Assessments Liens on the Units.

9.7 **Capital Improvement Assessments**. The Board may levy "**Capital Improvement Assessments**" for the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements. The amount of each Unit's respective obligation for a Capital Improvement Assessments shall be determined by such Unit's Allocated Common Expenses and Voting Interests at the time of the Capital Improvement Assessments.

9.8 **Reimbursement Assessments**. In addition to any other Assessments allowed under this Restated Declaration, the Board shall have the right from time-to-time and/or in appropriate circumstances to assess Assessments specifically against and with respect to individual Units, for costs, expenses, damages and/or impacts caused or relating to the specific assessed Units or the Owner of such Units (the "**Reimbursement Assessments**"). Such Reimbursement Assessments shall constitute obligations of the Owners of the assessed Units, as well as creating Assessments Liens on the assessed Units.

9.9 **Effect of Non-Payment of Assessments, Remedies of Association**. Any Assessments or portion or installment thereof that is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall entitle the Association to the relief set forth below.

9.9.1 The delinquency shall bear interest from and after the due date at the rate established by the Board in accordance with the any rules, regulations, policies or procedures adopted by the Board.

9.9.2 The Board may assess a late charge upon each delinquent payment in an amount to be established by the Board in accordance with the any rules, regulations, policies or procedures adopted by the Board.

9.9.3 The Board may assess, if applicable, a bad check charge in an amount established by the Board in accordance with the any rules, regulations, policies or procedures adopted by the Board.

9.9.4 The Board may accelerate the installment obligations of any Regular Assessments for which an installment is delinquent.

9.9.5 The Board may, but shall not be required to, record in the Official Records a Notice of Delinquent Assessments or charge against any Unit as to which an Assessments or charge is delinquent. The Notice shall be executed by an officer of the Board, and shall set forth the amount of the unpaid Assessments or charge, the name of the delinquent Owner and a description of the Unit.

9.9.6 The Association may foreclose upon the Assessments Lien in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Unit at foreclosure.

9.9.7 In the Association's discretion, the Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessments. No Owner may exempt himself/herself/itself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any Common Elements or by abandonment of the Unit against which the Assessments are made.

9.9.8 The delinquent Owner shall be liable for all costs (including attorneys' fees and related expenses), that may be incurred by the Association in collecting delinquent Assessments, which collection costs shall be added to the delinquent Assessments.

9.10 **Estoppel Statement**. Within fifteen (15) days after receiving a written request therefor from a purchaser, Owner or mortgagee of a Unit, the Association shall provide a certificate, signed by an officer or agent of the Association, stating all Assessments and other moneys owed to the Association by the Owner with respect to his/her/its Unit. Any Person may rely upon such certificate with respect to the amount set forth therein. The Association or its authorized agent may charge a reasonable fee for the preparation of such certificate.

9.11 **Installments**. Regular Assessments shall be assessed and collected on a quarterly basis, in advance, as determined by the Board.

9.12 **Application of Payments**. Any payments received by the Association from any Owner shall be applied to the payment of the following (in the following priorities): (i) first to any interest accrued on delinquent Assessments installment(s); (ii) then to any late fees; (iii) then to any costs, (including attorneys' fees and related expenses) incurred in connection with collection of any unpaid Assessments; and (iv) then to any delinquent and/or accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

## ARTICLE 10
## OCCUPANCY, USE AND OWNERSHIP OF UNITS

In order to achieve and maintain the Standards and for the protection of the property values of the Community Property, the use of the Community Property shall be restricted by, and in accordance with, any Community Rules and Regulations (if any) and the following provisions:

10.1 **Unit Use and Occupancy**.

10.1.1 **Residence Condominiums, Employee Condominiums and Hotel Condominiums Use and Occupancy**. The Residence Condominiums, Employee Condominiums and Hotel Condominiums shall be used for residential purposes only (be it permanent, temporary or transient), consistent with the Standards and other uses within the Community, and shall at all times be used in a manner in accordance with the terms of this Restated Declaration. Residence Condominiums, Employee Condominiums and Hotel Condominiums shall not be utilized for any commercial purposes or uses other than as provided in this Restated Declaration. Further, the Residence Condominiums, Employee Condominiums and Hotel Condominiums shall at all times be used and occupied in accordance with all laws, city, county and state codes, ordinances and regulations and the requirements of governmental bodies (specifically including the Town) applicable from time-to-time to the Community Property. In no event shall any Residence Condominium, Employee Condominiums or Hotel Condominiums be used or occupied for purposes of conducting any form of commercial or retail business requiring or involving visits by third Persons. This restriction/prohibition regarding commercial/retail uses/occupancy of Residence Condominiums, Employee Condominiums and Hotel Condominiums shall apply, irrespective of any allowed zoning uses and/or other applicable laws, rules or regulations. The short term and/or transient guest rental of the Residence Condominium and the Hotel Condominium Units are specifically permitted uses and shall not be deemed to be an impermissible commercial use or occupancy of such Units. The use and occupancy of the Employee Condominiums are further restricted by the Employee Housing Deed Restriction.

10.1.1.1 None of the restrictions contained in this Section 10.1.1 shall be amended, altered or eliminated, without the written consent of the Hotel Unit Owner. To the extent allowed under the Town Requirements (specifically the Hotel Deed Restriction), the provisions of this Section 10.1.1 shall not apply to Units owned by the Hotel Unit Owner for the use of models, sales or re-sales offices, guest suites or management or administrative services, which shall not be deemed to be impermissible commercial use of occupancy of such Units.

10.1.2 **Commercial Units**. The Commercial Units are zoned for commercial usage by the Town and are restricted solely to commercial and/or civic uses, as further set forth in this Restated Declaration and the Town Requirements. The Commercial Units shall only be used for civic, retail, commercial, and/or public/community purposes consistent with the Town Requirements, the Standards and other uses within the Community and shall at all times be used in a manner consistent, and in accordance with (i) the terms of this Restated Declaration and the other Community Documents; (ii) the Town Requirements; (iii) the Standards; and (iv) all applicable laws, town, county and state codes, ordinances and regulations.

10.1.3 **Ice Rink Unit**. The Ice Rink Unit shall be used only for ice sports recreation purposes, public and private events, water feature operations and/or other Community and/or related purposes. In addition, the Ice Rink Unit Owner shall be permitted to erect over the Ice Rink Unit, from time-to-time, a free-standing non-permanent tent-like structure which shall not be attached to any Building and shall not exceed 15 vertical feet above from the surface of the ice (but at no time exceeding one consecutive month in duration), except as may be approved by the Hotel Unit Owner.

10.1.4 **Plaza Unit**. The Plaza Unit shall be used only for purposes of public pedestrian uses and access, Owner pedestrian uses and access, recreational uses, civic uses, public and private events, and/or other Community uses. In addition to the foregoing, the Plaza Unit may be used in connection with food, beverage, and/or liquor operations conducted by and/or through the Plaza Unit Owner or its designee, or the Hotel Unit Owner, (including, without limitation, sales, service and consumption of food, beverages and/or liquor and placement of tables, chairs, and related items for purposes of outdoor service), subject to agreement of the Plaza Unit Owner, receipt of appropriate governmental approvals and permitting (such as a license agreement) for such operations.

10.1.5 **Hotel Unit**. The Hotel Unit may be used for any purpose, regardless of the purpose for which it was originally designed or intended, so long as the same is used and operated in accordance with the Town Requirements, and applicable zoning and other laws.

10.1.6 **Parking Units**. The Parking Units shall be used only for parking and related purposes consistent with the Community Documents, the Standards and the Town Requirements.

10.1.7 **Children**. Children shall be permitted to be Occupants of Units while accompanied by an adult, but may be restricted in certain activities, as deemed necessary or appropriate by the Association or the Hotel Unit Owner or Hotel Operator.

10.2 **Use of Common Elements and Association Property**. The Common Elements and Association Property shall be used only for furnishing services and facilities for which they are reasonably suited, and which services and facilities are incident to the use and occupancy of the Units. Any proposed change in use of any portion of the Common Elements or Association Property that could have a material adverse effect upon the Hotel Unit or the Hotel Unit Owner, shall require the prior written consent of the Hotel Unit Owner (which can be granted or withheld in the Hotel Unit Owner's sole and absolute discretion).

10.3 **Nuisances**. No nuisances (as defined by the Association) shall be allowed within the Community, nor shall any use or practice be allowed which is a source of annoyance to Owners or Occupants or which interferes with their peaceful possession, quiet enjoyment or proper use of the Units or Community Property. No activity specifically permitted by this Restated Declaration including, without limitation, activities or businesses conducted from the Hotel Unit and Commercial Units, shall be deemed a nuisance, regardless of any noises, lighting and/or odors emanating therefrom (except, however, to the extent that such odors, lighting and/or noises exceed limits permitted by applicable law). Each Owner, by acceptance of a deed or otherwise acquiring title to a Unit, shall be deemed to understand and agree that it is intended (without creating any obligation) that restaurants, cafes, bars and/or other food and beverage or hotel-related operations may be operated from the Hotel Unit and/or Commercial Units and that such operations may result in the creation of lighting, odors and noise that may affect all portions of the Community. Accordingly, each Owner agrees (i) that such lighting, odors and noise shall not be deemed a nuisance hereunder; (ii) to release the Hotel Unit Owner, Commercial Unit Owners and any Occupant and/or the Hotel Operator from any and all liability resulting from the same. Similarly, the Hotel Unit and Commercial Units are designed and intended to attract customers, patrons and/or guests who are not Owners, such additional traffic over and upon the Community Property shall not be deemed a nuisance hereunder.

10.4 **Hazardous or Unlawful Uses**. No hazardous or unlawful use shall be made of any part of the Community Property, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed (including without limitation, all Town Requirements). Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction that relate to any portion of the Community Property (including, without limitation, all Town Requirements), shall be corrected by, and at the sole expense of, the party causing the violation. Nothing shall be done or kept in any portion of the Community Property that would result in the cancellation of the insurance on all or any part of the Community Property or an increase in the rate of the insurance carried by the Association on all or any part of the Community Property, without the prior written approval of the Association and/or the Hotel Unit Owner, as applicable. No activity specifically permitted by this Restated Declaration including, without limitation, activities or businesses conducted from the Hotel Unit and Commercial Units, shall be deemed to be a violation of this Section 10.4. Notwithstanding the foregoing and any provisions of the Community Documents, the Association shall not be liable to any Person(s) for its failure to enforce the provisions of this Section 10.4 or the provisions of Section 10.3.

10.5 **Exterior Appearance**. In order to promote a consistent exterior Building appearance, the curtains, shades, drapes (and linings thereof), treatments, displays and/or signage that face or impact the exterior windows or exterior glass doors of any Unit shall consist of materials and/or colors that strictly comply with the Standards and shall be subject to disapproval by the Hotel Unit Owner (in its sole and absolute discretion), in which case they shall be removed and replaced with items that are in compliance with the Standards. Further, without limiting the generality of other provisions of this Restated Declaration and/or other Community Documents (and subject to the Act and Section 10.10, no Owner shall cause or permit anything to be affixed or attached to, hung, displayed, maintained, stored or placed on (or visible from) the exterior walls, doors, balconies, terraces or windows

of the Building (including, without limitation, awnings, signs, screens, window tinting, towels, clothing, bicycles, planters, plants, furniture, grills, fixtures and equipment), without the prior written consent of both the Board and the Hotel Unit Owner.

10.6 **Sound Restrictions**. Each Owner, by acceptance of the deed or other conveyance of title to the Owner's Unit, hereby acknowledges and agrees that (i) sound transmission in a multi-story building such as the Building(s) is very difficult to control; (ii) noises from adjoining or nearby Units and/or mechanical equipment, including elevators, can often be heard in another Unit; (iii) the Hotel Unit Owner has not made any representation or warranty of any kind as to the level or sound transmission between and among Units and/or from mechanical equipment; and (iv) each Owner hereby expressly waives any such warranty and expressly releases any claim for loss or damages and/or any claim for injunction resulting from any such sound transmissions.

10.7 **Leasing of Units**.

10.7.1 **Leasing of Residence Condominiums, Hotel Condominiums and Employees Condominiums**.

10.7.1.1 Residence Condominiums shall be permitted to be used for long-term rentals. Residence Condominium and Hotel Condominium Units shall be permitted to be used for short-term transient guest rentals. All leases and/or rental agreements or arrangements shall be in accordance with any rules, regulations and/or conditions, if any, established from time-to-time by the Hotel Unit Owner (in its sole and absolute discretion), the Hotel Operator and/or pursuant to applicable governmental restrictions including the Town Requirements, the Community Documents and this Restated Declaration.

10.7.1.2 Each Owner and Occupant of a Residence Condominium and a Hotel Condominium Units shall fully comply with the covenants, terms, conditions and restrictions of the Community Documents, the Standards and the Town Requirements, including, without limitation, any and all matters set forth therein regarding (i) mandatory check-in for Owners and Occupants; (ii) coordination of any charging privileges that the Hotel Unit Owner may elect to afford Owners and/or their Occupants; and (iii) other matters reasonably necessary to allow Owners and Occupants to be well integrated into a unified structure and operation and to ensure that the Units and related systems and facilities and the use and occupancy by Owners and/or Occupants are integrated to the extent contemplated by the Community Documents. The provisions of this Section 10.7.1.2 shall not be amended or altered, without the prior written consent of the Hotel Unit Owner and the Town (with respect to any matters addressed by the Town Requirements).

10.7.1.3 Employee Condominiums may only be leased and occupied in accordance with the Employee Housing Deed Restriction and the Town Requirements.

10.7.2 **Liability**. Owner(s) shall bear joint and several liability with all Occupants of the Owners' Unit to the Association and/or other Owners (specifically including the Hotel Unit Owner), as applicable, for any amount that is required by the Board to repair any damage to the Community Property (including other Units) resulting from acts or omissions of such Owners' Occupants (all as determined in the sole and absolute discretion of the Board). The Owner(s) agree to pay timely any claim for injury or damage to property caused by the negligence of such Occupants, as well as any fines or other Assessments that should be levied against the Owners' Unit(s) therefor. All tenancies are hereby made subordinate to any liens levied by the Association, whether prior or subsequent to such lease.

10.7.3 **Other Matters**. During the time a Unit is occupied by Occupants other than the Owner of such Unit, the Owner shall not have the right to use the Common Elements or the Shared Facilities, except (i) as a guest of such Occupant; (ii) as the guest or invitee of another Owner; or (iii) as a landlord seeking to enforce its landlord rights vis-à-vis the Occupants, pursuant to applicable laws, private contract rights and/or the Community Documents.

10.8 **Access to Residence Condominium and Hotel Condominiums**. In order to facilitate access to Residence Condominiums and Hotel Condominiums by the Association and the Hotel Unit Owner for the

purposes enumerated in this Restated Declaration, it shall be the responsibility of all Residence Condominium Owners and Hotel Condominium Unit Owners to deliver a set of keys (or access card or code, as may be applicable) to their respective Units to the Association and/or the Hotel Unit Owner to use in the performance of its/their functions, if applicable. No Residence Condominium Owner or Hotel Condominium Owner shall change the locks to his/her/its Unit. The Hotel Unit Owner shall have the right to adopt reasonable regulations from time-to-time regarding access control and check-in, check-out procedures which shall be applicable to both Occupants and Owners of the Residence Condominium and Hotel Condominium Unit Owners.

10.9 **Signs**. With the exception of the Hotel Unit Owner, no Owner shall install or publicly display any sign, poster, display, billboard or other advertising device of any kind on any portion of the Community Property without the prior written consent of Hotel Unit Owner and the Board, except as required by the Act. The Hotel Unit Owner shall have the right to install and erect signs (and a relevant easement is hereby reserved in its favor) upon any portion of the Community Property (except within the Residence Condominiums, Employee Condominiums or Commercial Units, unless otherwise specifically permitted in this Restated Declaration) in its discretion, without the consent or approval of the Association or any other Owner.

10.10 **Antennas; Satellite Dishes**. Except for those installed and/or maintained by or on behalf of the Hotel Unit Owner, no antenna, satellite dish or other transmitting or receiving apparatus shall be installed in or upon any portion of the Community Property without the prior written consent of the Hotel Unit Owner and Association, except to the extent applicable law requires otherwise.

10.11 **No Time Sharing**. The use or occupancy of Residence Condominiums and Hotel Condominiums Unit that, in the sole and absolute discretion of the Hotel Unit Owner, consists of a timeshare, fractional ownership, interval exchange, club or vacation plan (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems), shared use or other membership plans or arrangements through which a participant acquires an ownership interest in a Residence Condominium or Hotel Condominium with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of a Residence Condominium or Hotel Condominium Unit or a portfolio of accommodations including a Residence Condominium or Hotel Condominium (collectively, a "**Time Sharing Plan**") is not permitted, unless the Time Sharing Plan is established, offered and/or managed by the Hotel Unit Owner or its designee, or the Time Sharing Plan is approved by the Hotel Unit Owner in its sole and absolute discretion.

10.12 **Community Rules and Regulations**. The Community Rules and Regulations, if any, may be made and amended from time-to-time by a majority vote of the Board. The Association shall furnish copies of the Community Rules and Regulations and any amendments to all Owners and may post them on the Community website (if any).

10.13 **Relief by Association**. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this ARTICLE 10 for good cause shown, to the extent that granting such relief does not in any manner materially adversely diminish the right, privileges or authority of the Hotel Unit Owner or the other requirements set forth in this Restated Declaration. To the extent that such relief would materially adversely diminish the Hotel Unit Owner's rights, the same shall not be valid without the prior written approval of the Hotel Unit Owner.

10.14 **Effect on the Hotel Unit Owner**. The restrictions and limitations set forth in this ARTICLE 10 shall not apply to the Hotel Unit Owner or the Units owned by the Hotel Unit Owner from time-to-time.

## ARTICLE 11
## HOTEL UNIT SHARED FACILITIES AND NON-SHARED FACILITIES

11.1 **Integrated Improvements; Designation of Hotel Unit Shared Facilities**. The Community, Buildings, Units and Improvements have been developed as a single unified resort Community. Given the integration of the Community and related Improvements, including the Buildings, as well as the uses of the Improvements and Community, certain areas of the Hotel Unit have been designated as Shared Facilities.

11.2 **Ownership and Control of Shared Facilities**. All of the Shared Facilities are a part of the Hotel Unit and are owned and controlled by the Hotel Unit Owner. The Shared Facilities are not a part of the Common Elements or other Units in the Community. The Hotel Unit Owner (in its sole and absolute discretion) among other things: (a) owns, manages, maintains, repairs, insures and replaces the Shared Facilities, (b) adopts the budget for the Shared Facilities Expenses, and (c) determines the rules and regulations regarding the use of the Shared Facilities.

11.3 **Subcategories of Shared Facilities**. As of the Effective Date there are three subcategories of Shared Facilities within the Hotel Unit: (i) General Shared Facilities; (ii) Hotel Shared Facilities; and (iii) Parking Shared Facilities, as each is individually described and defined below.

11.3.1 **General Shared Facilities**. "**General Shared Facilities**" are intended to benefit the entire Community and include, among other things:

11.3.1.1 those portions of the Community identified on the Community Map and in **Exhibit "B"** as General Shared Facilities;

11.3.1.2 all utility, mechanical, electrical, plumbing, HVAC and other systems (including, without limitation, all wires, conduits, pipes, ducts, transformers, cables and other apparatus related thereto), and all housing therefor, that are located within or serving solely the Shared Facilities or more than one Unit; provided, however, that any of these that exclusively serve only one Unit or any portion of the Non-Shared Facilities shall not constitute Shared Facilities, but, rather, shall constitute Limited Common Elements;

11.3.1.3 all trash chutes for the Buildings and all trash rooms and trash disposal areas or facilities;

11.3.1.4 all service and passenger elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment, used in the operation of those elevators in the Buildings designated on the Community Map as General Shared Facilities;

11.3.1.5 all circulation areas, corridors, hallways and elevator lobbies located in the Buildings and not designated on the Community Map as Hotel Shared Facilities;

11.3.1.6 all sidewalks on grade, if any;

11.3.1.7 any landscaping and outside water features, if any;

11.3.1.8 all roads, outside walkways and driveways, but excluding the Garage Ramp/Tunnel;

11.3.1.9 the Life Safety Systems and building security systems;

11.3.1.10 the loading dock and loading areas of the Community Property, except any portions thereof constituting a Civic Condominium;

11.3.1.11 stairs and stairwells servicing the Employee Condominiums and/or other portions of the Buildings not designated on the Community Map as Hotel Shared Facilities; and

11.3.1.12 the Building Roofs & Attic Spaces.

11.3.2 **Hotel Shared Facilities**. The "**Hotel Shared Facilities**" are intended to benefit the Residence Condominiums, Hotel Condominiums and Hotel Unit and initially include, among other things:

11.3.2.1 those portions of the Community identified on the Community Map and in **Exhibit "B"** as Hotel Shared Facilities;

11.3.2.2 the main Hotel lobby and entry areas;

11.3.2.3 front desk and reception areas;

11.3.2.4 the exterior of any entry door to a Residence Condominium and/or Hotel Condominium from a Shared Facility hallway or corridor or other portion of the Hotel Unit (for purposes of maintenance and repair only);

11.3.2.5 the Telephone and Telecommunications Systems;

11.3.2.6 all circulation areas, corridors, hallways stairs and stairwells, public restrooms and elevator lobbies located on those levels of the Buildings in which the Residence Condominiums and/or Hotel Condominiums are located and/or accessing and/or servicing only the Residence Condominiums and/or the Hotel Condominiums, all as further designated on the Community Map as Hotel Shared Facilities; and

11.3.2.7 all service and passenger elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment, used in the operation of those elevators in the Buildings accessing and/or servicing only the Residence Condominiums and/or the Hotel Condominiums, as further designated on the Community Map as Hotel Shared Facilities;

11.3.2.8 the lounge and concierge areas, ski storage lockers, kids club, hot tub and other guest services areas and facilities, if any;

11.3.2.9 pool and pool deck, along with restrooms, circulation and equipment facilities exclusively serving same;

11.3.2.10 fitness and/or aerobics center, along with restrooms, circulation and equipment facilities exclusively serving same; and

11.3.2.11 any and/or all staffing, service and/or other operational undertakings associated with any of the foregoing.

11.3.3 **Parking Shared Facilities**. Parking Shared Facilities are those areas within the Hotel Unit located in the Parking Garage that are designated as "**Parking Shared Facilities**" and include all vehicular and pedestrian circulation and entry/exit areas in the underground Parking Garage in the Community that are located within the Hotel Unit.

11.4 **Construction or Alteration of Additional Shared Facilities**. Subject to the provisions of ARTICLE 12 below, the Hotel Unit Owner shall have the absolute right at any time, and from time-to-time, to alter, renovate, repair and/or replace the Shared Facilities, and to construct additional facilities and/or improvements upon or adjacent to the Hotel Unit and/or to determine whether these shall be deemed General Shared Facilities or Hotel Shared Facilities.

11.5 **Elimination of Hotel Shared Facilities**. Subject to the provisions of ARTICLE 12 below, the Hotel Unit Owner shall have the absolute right at any time, and from time-to-time, to eliminate, change, modify, repurpose or re-classify any of the Hotel Shared Facilities, and shall have the absolute right any time, using Hotel Unit Owner's commercially reasonable discretion, to determine the appropriate levels of staffing, service and operational undertakings pursuant to Section 11.3.2.11 above (and, following any such determination, to thereafter modify the same).

11.6 **The Non-Shared Facilities**. Any and all of those areas depicted on the Community Map as Non-Shared Facilities or Non-Shared Parking Facilities are expressly excluded from the Shared Facilities and shall remain the exclusive property, available for the exclusive use, of the Hotel Unit Owner. Such availability shall include, without limitation, use by the Hotel Unit Owner for purposes of food and beverage areas and operations, ballrooms, meeting rooms, conference rooms, function areas, business center(s), sales offices, vending areas or

operations, spa operations, parking operations/services (whether valet and/or self-service) and/or other retail areas and/or operations, if any, located within the Hotel Unit, together with any and all associated services and/or staffing.

11.7 **Revenue Earned from Non-Shared Facilities and/or Shared Facilities**. The Hotel Unit Owner shall not be required to share with any of the other Owners or the Association any revenues earned or received by the Hotel Unit Owner and/or the Hotel Operator (on behalf of the Hotel Unit Owner) from the use and/or operations on any portions of the Hotel Unit (including either or both of the Non-Shared Facilities and/or the Shared Facilities), or services provided therefrom by the Hotel Unit Owner or Hotel Operator.

11.8 **Non-Shared Facilities and/or Shared Facilities Maintenance**. The Hotel Unit Owner shall maintain, repair, replace, manage and operate the Hotel Unit (including both the Non-Shared Facilities and the Shared Facilities), in accordance with the Standards and Town Requirements, except as set forth in ARTICLE 14 below.

## ARTICLE 12
## SHARED FACILITIES EASEMENTS

12.1 **The Shared Facilities Easements**. The Hotel Unit Owner hereby grants and convey to the Association the easements set forth in Sections 12.1.1 and 12.1.2 (collectively the "**Shared Facilities Easements**"). The Shared Facilities Easements are granted to the Association for the benefit of the Units as appurtenances to the specified Units and shall constitute both benefits and burdens running-with-the-land. As a result, these Shared Facilities Easements shall not be conveyed, encumbered or transferred separately from the Units to which they are appurtenant and are subject to the reservations, limitation and conditions expressly reserved and retained by the Hotel Unit Owner in this restated declaration.

12.1.1 **General Shared Facilities Easement**. The Hotel Unit Owner hereby grants to the Association the perpetual, non-exclusive right to use, access, benefit from and/or enjoy the General Shared Facilities, as well as services provided therefrom (the "**General Shared Facilities Easement**") for the benefit of the Owners and Occupants of (i) the Residence Condominiums; (ii) Hotel Condominiums; (iii) Employee Condominiums; (ii) the Parking Units; and (iii) the Commercial Units, during such times as such Owners and/or Occupants are in occupancy of their respective Units (and including their guests, invitees and/or agents during such times). The General Shared Facilities Easement shall at all times be subject to, and limited by, the Standards and any Town Requirements, as may be modified from time-to-time. The General Shared Facilities Easement and any rights conveyed therewith, may be modified, relocated, suspended, regulated, expanded and/or limited at any time, and from time-to-time, by the Hotel Unit Owner (in its sole and absolute discretion); subject, however, to limitations on denying Owners' reasonable access to and from their Units, pursuant to Section 12.4 and the limitations of Section 13.2.1.

12.1.2 **Hotel Shared Facilities Easement**. The Hotel Unit Owner hereby grants to the Association the perpetual, non-exclusive right to use, access, benefit from and/or enjoy the Hotel Shared Facilities, as well as services provided therefrom (the "**Hotel Shared Facilities Easement**") for the benefit of the only the Owners and Occupants of (i) the Hotel Condominiums; and (ii) the Residence Condominiums, during such times as such Owners and/or Occupants are in occupancy of their respective Units (and including their guests, invitees and/or agents during such times). The Hotel Shared Facilities Easement at all times shall be subject to, and limited by, the Standards and any Town Requirements, as these may be modified from time-to-time. The Hotel Shared Facilities Easement grant, and any rights conveyed therewith, may be modified, relocated, suspended, regulated, expanded and/or limited at any time, and from time-to-time, by the Hotel Unit Owner (in its sole and absolute discretion); subject, however, to limitations on denying Owners' reasonable access to and from their Units, pursuant to Section 12.4 and the limitations set forth below:

12.1.2.1 **Elimination of Hotel Shared Facilities**. At any time after the conveyance of the fortieth (40th) Residence Condominium and/or Hotel Condominium Unit by Hotel Unit Owner to a third party, if Hotel Unit Owner proposes any elimination, material reduction, material modification, repurpose or re-classification of any Hotel Shared Facilities consisting of physical improvements (but not staffing, service or operational undertakings), Hotel Unit Owner shall provide written notice to the Association with respect to any such proposed elimination, etc. If such proposal is not approved by at least fifty percent (50.0%) of the Unit Owners of

Residence Condominium and Hotel Condominium Units which are not owned by the Hotel Unit Owner at a meeting of such Unit Owners held within ten (10) days after receipt of such notice, then Hotel Unit Owner shall have the right either (a) to withdraw any such planned action, or (b) to redesignate the Hotel Shared Facilities that the Hotel Unit Owner proposed to eliminate to the Association as a Limited Common Element of the Residence Condominium and Hotel Condominium Units by recordation of an amendment to the Condominium Map and thereafter all costs and expenses associated with such Limited Common Element shall be allocated solely to the Residence Condominium and Hotel Condominium Units.

12.1.2.2 **Addition of Hotel Shared Facilities**. At any time after the conveyance of the fortieth (40th) Residence Condominium and/or Hotel Condominium Unit by Hotel Unit Owner to a third party, if Hotel Unit Owner proposes to construct any additional Hotel Shared Facilities, then Hotel Unit Owner shall provide written notice to the Association with respect to such additional Shared Facilities, including the anticipated cost of the same and the anticipated effect upon Shared Facilities Expenses. If such proposal is not approved by at least fifty percent (50.0%) of the Unit Owners of Residence Condominium Units and Hotel Condominium Units which are not owned by the Hotel Unit Owner at a meeting of such Unit Owners held within ten (10) days after receipt of such notice, then with respect to the same, Hotel Unit Owner shall have the right either (a) to withdraw any such planned action, or (b) to construct such improvements as Non-Shared Facilities (and for which Hotel Unit Owner shall be solely responsible, provided that the Owners of Residence Condominium Units and Hotel Condominium Units shall not have any right to utilize such Non-Shared Facilities absent Hotel Unit Owner's prior written consent which may, among other factors, be conditioned upon payment of a fee or other sum).

12.2 **Retail Condominium 112 Restroom Access and Use Easement**. The Owner of Retail Condominium 112 (including, without limitation, its licensees, designees, permittees, and assigns) shall be vested with an irrevocable, non-exclusive right to access and use the restroom facilities (as reconfigured, modified or altered from time to time) located adjacent to Retail Condominium 112 and designated as part of the Hotel Shared Facilities, all as depicted on the Community Map, in connection with allowed commercial and/or retail uses within Retail Condominium 112.

12.3 **Shared Facilities Easements Limitations and Reservations**. In addition to the reservations and limitations to the Shared Facilities Easements set forth in this Restated Declaration, the grants of the Shared Facilities Easements contained in this ARTICLE 12 shall at all times be subject to the following additional limitations and reserved rights of the Hotel Unit Owner, which limitations and/or reserved rights may be exercised, without the consent or approval of any other Owner or the Association (including, without limitation, any and all mortgagees):

12.3.1 rights to impose and allocate Shared Facilities Expenses;

12.3.2 rights to charge fees for the extraordinary or exclusive use of, or for services provided from, any of the Shared Facilities;

12.3.3 rights to adopt, at any time and from time-to-time, and enforce reasonable rules, restrictions, limitations and/or regulations governing the use of, access to and/or otherwise with respect to any of the Shared Facilities;

12.3.4 rights to suspend the rights of any Owner and/or Occupant to use any of the Shared Facilities that are not necessary for the minimal quiet enjoyment of the Unit for any period during which any of the following remain uncured: (i) any Shared Facilities Expenses allocated to the Unit remain unpaid for more than thirty (30) days, or (ii) any material violation of the terms, restrictions, conditions and/or limitations of the Shared Facilities Easements grants contained in this ARTICLE 12, any Town Requirements, the Standards and/or any other requirements contained in the Community Documents;

12.3.5 rights to reasonably limit the number of guests or invitees of Owners or Occupants using the Shared Facilities, or any portions thereof;

12.3.6 rights to allow additional Owners, Occupants or any other Person (including members of the general public), to access to and/or use some or all of the Shared Facilities (in the case of persons who are not Owners, with or without charge for the benefit of the Hotel Unit Owner), without the consent or approval of any other Owner or the Association;

12.3.7 rights to grant and/or withdraw from time-to-time general (i.e., "*blanket*") and/or specific easements on, over, under and/or through the Shared Facilities, or any portions thereof;

12.3.8 rights to add, expand, modify, alter, relocate, withdraw and/or eliminate the Shared Facilities, or any one or more of the categories of Shared Facilities, or any portions thereof, subject to Section 12.1.2.1 and Section 12.1.2.2;

12.3.9 rights to limit, terminate or revoke any one or more of the Shared Facilities from use by any Owner; provided, however, that no such action shall unreasonably interfere with the minimum required quiet enjoyment of any Unit and/or related minimum practical pedestrian access thereto;

12.3.10 rights to limit or prohibit access or use by Owners and/or Occupants to or through any portions of the Shared Facilities (i) intended by the Hotel Unit Owner (in its sole and absolute discretion) for use solely by employees or management and/or for Hotel Services provided by the Hotel Unit Owner or the Hotel Operator, Non-Shared Facilities and/or other operations or related purposes; (ii) intended for use solely by the Hotel Condominium and/or Residence Condominium Unit Owners; or (iii) otherwise deemed by the Hotel Unit Owner (in its sole and absolute discretion) as reasonably needing to be limited (provided, however, that no such action shall unreasonably interfere with the minimum required quiet enjoyment of any Unit and/or reasonably adequate pedestrian access thereto);

12.3.11 rights to temporarily close off all or portions of the Shared Facilities for private functions and charge such fees as established from time-to-time by the Hotel Unit Owner (in its sole and absolute discretion) for the exclusive use of such Shared Facilities (which fees shall be for the benefit of, and retained by, the Hotel Unit Owner);

12.3.12 rights to temporarily close off any portion of the Shared Facilities for maintenance, repair, restoration, replacement or improvement; and

12.3.13 rights to add or eliminate categories of Shared Facilities, and/or re-designate Shared Facilities as Non-Shared Facilities or as another category of Shared Facilities, and the other rights established in Section 12.1.2.1 and Section 12.1.2.2 above.

12.4 **Reasonable Access to and From Owners' Units**. Notwithstanding anything contained in this ARTICLE 12 to the contrary, no alteration, relocation, re-designation, re-categorization, elimination or withdrawal of Shared Facilities shall cause the Shared Facilities Easements to deny any Owners reasonably adequate legal pedestrian access to and from the Owner's Unit. The foregoing shall not (i) preclude the temporary cessation of services and/or use rights or temporary closure of the Shared Facilities or portions thereof should the Hotel Unit Owner deem such steps as reasonably necessary to effect repairs, additions, alterations and replacements or for holding events; or (ii) limit the right of the Hotel Unit Owner either to allow others to use the Shared Facilities and/or to grant others rights to use the Shared Facilities Easements.

12.5 **Third-Party Providers**. Owners may contract with third-party Persons to provide services and/or goods to the Owners' respective Units (the "**Third-Party Providers**"), except for any of the Hotel Exclusive Services. In this event, the Owners must ensure that (a) such services and/or goods supplied by the Third-Party Providers must comply with the Standards and the reasonable requirements of the Hotel Unit Owner; and, further, (b) such services and/or goods may not be provided by the Third-Party Providers from locations within the Hotel Unit. The Hotel Unit Owner and/or Hotel Operator shall have the right to establish reasonable regulations from time-to-time governing the provision of any services and/or goods by Third-Party Providers. Such regulations may regulate, among other things (and without limitation), activities such as solicitation and/or provision of housekeeping, personal services (e.g., massage, personal training, dry cleaning, transportation services, etc.) and/or

food and beverage service, to the Owners and/or Occupants. Such rules and/or regulations must be followed by all Third-Party Providers and also may include, without limitation, restrictions and/or rules that (i) require that any Person providing services as a Third-Party Provider provide such services attired in a fashion consistent with the Standards; (ii) restrict the hours and/or days during which goods and/or services may be provided by Third-Party Providers; (iii) require any Person providing goods and/or services as a Third-Party Provider to check-in with the Hotel Unit Owner and/or Hotel Operator, prior to commencement of any services; (iv) restrict access of Third-Party Providers to certain areas within the Shared Facilities; (v) require that any or all Third-Party Providers undergo background checks and/or comply with security procedures; (vi) require any Third-Party Providers to maintain all necessary licenses and permits to perform their duties; and/or (vii) require that any Third-Party Providers carry adequate insurance coverage and name the Association and Hotel Unit Owner and/or Hotel Operator as additional named insured parties (with such limits and coverage terms as the Board and Hotel Unit Owner shall require from time-to-time, in their sole and absolute discretion).

12.6 **Mortgagees of Owners**. Any first mortgagee that holds a valid Mortgage lien against a Unit shall be deemed an "*invitee*" of the Owner of the Unit and shall have the same Shared Facilities Easements as the Owner of the Unit, to the extent necessary to enforce its contractual rights under its mortgage documents in the event of a default thereunder by the Owner.

## ARTICLE 13
## SHARED FACILITIES EXPENSES

13.1 **Shared Facilities Expenses**. The Hotel Unit Owner shall allocate the charges, cost, expenses, liabilities and obligations incurred by, or allocated or assessed to or through the Hotel Unit Owner related to the General Shared Facilities and Hotel Shared Facilities (collectively "**Shared Facilities Expenses**") to the Association in accordance with this ARTICLE 13. The Shared Facilities Expenses shall be deemed to be Common Expenses or Limited Common Expenses, as applicable.

13.1.1 "**General Shared Facilities Expenses**" means all charges, costs, expenses liabilities, and obligations incurred by, or allocated or assessed to or through the Hotel Unit Owner with respect to (a) maintenance, management (including, without limitation, a reasonable management fee to be assessed, as determined by the Hotel Unit Owner), repairs, replacement, alteration, improvement, relocation, operation and insurance of the General Shared Facilities (which shall include, without limitation, amounts for funding contingency and/or bad debt reserves with respect to the General Shared Facilities Expenses); (b) establishment of reasonable reserves for the repair, replacement or additions of and to the General Shared Facilities; (c) capital improvements in and to the General Shared Facilities; (d) real estate and personal property taxes imposed on the General Shared Facilities; (e) electricity, gas, water and sewer and other utilities charges with respect to the General Shared Facilities and/or Units generally; (f) all charges and other costs of collection and otherwise with respect to the General Shared Facilities and General Shared Facilities Expenses (including, without limitation, attorneys' and paralegals' fees, disbursements and costs of any kind); (g) all other charges, amounts and expenses referred to in this Restated Declaration or imposed by the Hotel Unit Owner in connection with the provision of Hotel Services it provides from General Shared Facilities and/or Units generally; and (h) any delinquent and uncollected amounts otherwise payable to the Hotel Unit Owner pursuant to the Community Documents (including, without limitation, delinquent Shared Facilities Costs).

13.1.2 "**Hotel Shared Facilities Expenses**" means all charges, costs, expenses liabilities, and obligations incurred by, or allocated or assessed to or through the Hotel Unit Owner with respect to (a) maintenance, management (including, without limitation, a reasonable management fee to be assessed, as determined by the Hotel Unit Owner), repairs, replacement, alteration, improvement, relocation, operation and insurance of the Hotel Shared Facilities (which shall include, without limitation, amounts for funding contingency and/or bad debt reserves with respect to the Hotel Shared Facilities Expenses); (b) establishment of reasonable reserves for the repair, replacement or additions of and to the Hotel Shared Facilities; (c) capital improvements in and to the Hotel Shared Facilities; (d) real estate and personal property taxes imposed on the Hotel Shared Facilities; (e) electricity, gas, water and sewer and other utilities charges with respect to the Hotel Shared Facilities and/or Units generally; (f) all charges and other costs of collection and otherwise with respect to the Hotel Shared Facilities and Hotel Shared Facilities Expenses (including, without limitation, attorneys' and paralegals' fees, disbursements and costs of any kind); (g) all other charges, amounts and expenses referred to in this Restated Declaration or imposed by the Hotel Unit Owner in connection with the provision of Hotel Services it provides from Hotel Shared Facilities and/or Units generally; and

(h) any delinquent and uncollected amounts otherwise payable to the Hotel Unit Owner pursuant to the Community Documents (including, without limitation, delinquent Hotel Shared Facilities Expenses).

13.1.3 **Parking Shared Facilities Expenses**. The charges, costs, expenses liabilities, and obligations incurred by, or allocated or assessed to or through the Hotel Unit Owner with respect to the Parking Shared Facilities are dealt with in ARTICLE 14.

13.2 **Shared Facilities Budgets and Allocations**. At least 45 days before the commencement of each calendar year, the Hotel Unit Owner will prepare and adopt an annual estimated budget for the Shared Facilities Expenses based, in part, on the Hotel Unit Owner's reasonable, commercial projections (i) of the intensity of use of each of the Shared Facilities and market demands for the period subject to the budget; (ii) the condition of the Shared Facilities; (iii) the Standards; and (iv) any reasonable projections or projected capital reserve and/or replacement items, if any for the General Shared Facilities Expenses ("**General Shared Facilities Budget**") and the Hotel Shared Facilities Expenses ("**Hotel Shared Facilities Budget**") (collectively "**Shared Annual Budgets**"). The Shared Annual Budgets shall be provided to the Association by no later than thirty (30) days prior to the commencement of each calendar year for incorporation into the Association's Annual Budget. The Association shall include the Shared Facilities Expenses in the Association's Annual Budget and the Association shall allocate the Shared Facilities Expenses to the Units as part of the Regular Assessments in accordance with the Shared Facilities Allocations set forth in **Exhibit "C"**.

13.2.1 **Limitation on Increases in Shared Facilities Expenses**. After conveyance by the Hotel Unit Owner of the fortieth (40th) Residence Condominium or Hotel Condominium Unit, with respect to the Shared Annual Budgets, (i) the proposed General Shared Facilities Budget shall not propose a greater than a 5% increase (after adjustment for any CPI increase) in the General Shared Facilities Budget from the previous year, without the approval of a majority of the Voting Interests held by the Unit Owners other than those Units owned by the Hotel Unit Owner; or (ii) a greater than 5% increase (after adjustment for any CPI increase) in the Hotel Shared Facilities Budget from the previous year, unless approved by a majority of the Voting Interests held by Unit Owners of Residence Condominium and Hotel Condominium Units other than those Units owned by the Hotel Unit Owner. The foregoing limitations shall not apply to the extent of, and the permissible increase in said Shared Annual Budgets shall be determined without regard to any increases as a result of: (a) capital expenditures necessary, in Hotel Unit Owner's reasonable discretion, to maintain the Standards; (b) third-party costs and expenses not within the reasonable control of Hotel Unit Owner (e.g., costs of insurance, real estate taxes, utility costs, and the costs of snow and ice removal); and (c) additions and other changes to the Shared Facilities approved in accordance with Section 12.1.2.1 or Section 12.1.2.2 above.

13.2.2 **Explanation of Changes**. Hotel Unit Owner will include a detailed explanation of any proposed changes in the applicable Shared Annual Budgets from the prior year's Shared Annual Budgets to the extent of any unusual or non-recurring charges.

13.3 **Allocation of Shared Facilities Expenses**. The Shared Facilities Expenses shall be allocated to the Units by the Association, pursuant to the percentage allocations set forth in **Exhibit "C"** (the "**Shared Facilities Allocations**"). The Association shall allocated Shared Facilities Expenses to the Hotel Unit based upon the square footage of the Non-Shared Facilities.

13.3.1 The Shared Facilities Allocations may be changed from time-to-time by the Hotel Unit Owner depending on (i) any change in the location of the Shared Facilities; (ii) the addition or deletion of Shared Facilities in the future, to accommodate different types of Shared Facilities that may be available for use to some and not all of the foregoing Units; and/or (iii) other similar situations (as determined by the Hotel Unit Owner in its sole and absolute discretion).

13.4 **Capital Shared Facilities Expenses**. The Hotel Unit Owner may levy and allocate to the Association certain charges at any time and from time-to-time (i) for special purposes, non-recurring expenditures, unanticipated expenditures or capital improvements or repairs by the Hotel Unit Owner with respect to the Shared Facilities; and (ii) to cover actual or projected deficits or shortfalls with respect to the maintenance, management, repair, replacement and/or operation of the Shared Facilities (collectively, the "**Capital Shared Facilities**

**Expenses**"). The Association shall allocate the Capital Shared Facilities Expenses in accordance with the Shared Facilities Allocations.

13.5 **Reimbursement Shared Facilities Expenses**. The Hotel Unit Owner shall have the right to impose and levy charges at any time and from time-to-time for the repair or replacement of damage to any portion of the Shared Facilities caused by the misuse, negligence or other action or inaction of an Owner(s), an Occupant or any of their guests or designees ("**Reimbursement Shared Facilities Expenses**"). Reimbursement Shared Facilities Expenses shall be allocated by the Association to the Unit of the Owner responsible for such damage as a Reimbursement Assessment.

13.6 **Shared Facilities Financial Records**. The Hotel Unit Owner will maintain financial books and records showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and relocation of the Shared Facilities, including the then current Shared Annual Budgets and any then-proposed Shared Annual Budgets (the "**Shared Facilities Records**"). The Hotel Unit Owner shall have the Shared Facilities Records reviewed by an independent certified public accountant on an annual basis and shall provide copies of such review to the Association. The Hotel Unit Owner shall have the right (in its sole and absolute discretion) to establish from time-to-time reasonable hours (during regular business hours), noticing and procedural requirements for Owners and/or their written designees to inspect the Shared Facilities Records.

13.7 **The Hotel Unit Owner Consent; Conflict**. The provisions of this ARTICLE 13 shall not be amended, modified or in any manner impaired and/or diminished, directly or indirectly, without the prior written consent of the Hotel Unit Owner. In the event of any conflict between the provisions of ARTICLES 11, 12 and/or 13 and the provisions of any other provisions of the Community Documents, the provisions of ARTICLES 11, 12 and/or 13 shall prevail and govern.

## ARTICLE 14
## THE PARKING FACILITIES

14.1 **The Parking Facilities**. The "**Parking Facilities**" for the Community are located on two underground levels in the Parking Garage and include the following components which are described and depicted on the Community Map:

(i) 19 Individual Parking Units;

(ii) Town Parking Condominium (which contains parking spaces and facilities which are owned by the Town and are intended to be used for the provision of parking for a fee to the general public);

(iii) Non-Shared Parking Facilities (those parking spaces and facilities located within the Hotel Unit and are intended to be used in connection with the Hotel operations and made available to Residence Condominium Owners, Hotel Condominium Owners, and Retail Condominiums in accordance with rules, regulations and fees established by the Hotel Unit Owner in its sole and absolute discretion);

(iv) Parking Shared Facilities (primarily consisting of those areas used for pedestrian and vehicular access within the Hotel Unit);

(v) the "**Garage Ramp/Tunnel**" (the entrance into the Parking Garage from the public road which is located on real property owned by the Town adjacent to the Community, but which is not included within the Community boundaries). A perpetual, non-exclusive easement was granted by the Town to the Association and the Owners in, on, over and through the Garage Ramp/Tunnel for purposes of providing access to the Parking Facilities which is recorded at Reception No.405669 in the Official Records ("**Garage Ramp/Tunnel Easement**").

14.2 **Garage Limited Common Elements**. The "**Garage Limited Common Elements**" include all Common Elements including, without limitation, Building Structural Elements, the Garage Ramp/Tunnel Easement located below the ground level of the Community and in the underground Parking Garage. The Garage

Limited Common Elements shall constitute Limited Common Elements to the Parking Units and the Hotel Unit as depicted on the Community Map.

14.3 **Non-Shared Parking Facilities Usage Rights**. Non-Shared Parking Facilities are located in the garage portion of the Hotel Unit and are primarily designated for parking (and consists of approximately 84 parking spaces) and may be made available to Owners and/or Occupants, at the sole and absolute discretion of the Hotel Unit Owner, on either (i) a valet-parking basis in accordance with charges, rates and fees establishes from time-to-time by the Hotel Unit Owner; (ii) a non-reserved, first come, first available basis; or (iii) a combination thereof. The Hotel Unit Owner intends that all such parking be made available to Owners and/or Occupants, exclusively through valet parking services operated by the Hotel Unit Owner or Hotel Operator. Notwithstanding the foregoing, the Hotel Unit Owner hereby reserves the sole power and right, at any time and from time-to-time, to grant to specific Units, Owners, Occupants and/or the Association exclusive rights to use one or more of the identified parking spaces, on whatever terms and for whatever duration that the Hotel Unit Owner should decide (in its sole and absolute discretion). Any such grants of exclusive usage rights shall be made by the Hotel Unit Owner through written assignment (which need not be recorded). Any such written assignment will vest in the applicable Unit, Owner, Occupants and/or Association such exclusive rights to use (but not ownership or title to) the identified space(s), on the terms and conditions specified in the assignment document. Any fees charged and/or collected by the Hotel Unit Owner and/or Hotel Operator for such assigned rights to use parking spaces, if any, shall be retained by the Hotel Unit Owner and/or Hotel Operator and shall not constitute income or revenue for either the Association or any other Owners. The Hotel Unit Owner may reassign and/or relocate parking spaces that previously were assigned, in the event that the Hotel Unit Owner or Hotel Operator should deem such reassignment and/or relocation necessary and/or helpful (in their sole and absolute discretion) to maintain, operate, repair or manage any portion of the Hotel Unit, or otherwise. Temporary guest or recreational parking in any of the Non-Shared Parking Facilities spaces shall be permitted only as determined by the Hotel Unit Owner and/or the Hotel Operator (in their sole and absolute discretion), and only within specific parking spaces and areas clearly designated for such purposes, if any. The Hotel Unit Owner hereby retains full rights and powers to establish parking rules and regulations with respect to any Non-Shared Parking Facilities, including establishing procedures governing the involuntary removal of any violating vehicles.

14.4 **Sale, Transfer, and/or Conveyance of the Non-Shared Parking Facilities**. Pursuant to the Town Requirements, the Hotel Unit Owner shall not sell, transfer, and/or convey any of the Non-Shared Parking Facilities without the prior written consent of the Town. The provisions of this Section 14.4 may not be amended without the Town's prior written consent.

14.5 **Hotel Unit Owner's Valet Parking Obligations**. In accordance with the Town Requirements, the Non-Shared Parking Facilities shall be operated by the Hotel Unit Owner as valet parking facilities in compliance with the Parking Management Agreement (the "**Valet Parking Obligations**"). The Valet Parking Obligations shall not be altered or amended, without the Town's prior written approval.

14.6 **Operation, Maintenance, Cleaning, Striping, Signage, Repair and/or Replacement of the Parking Facilities**.

14.6.1 **Town Parking Condominium**. The Town Parking Condominium Owner shall be solely responsible for the operation, maintenance, day-to-day cleaning and upkeep, placement and upkeep of signage for, and striping of those areas labeled as the "**Town Parking Maintenance Areas**" on **Exhibit "D"** and shall bear all costs incurred in connection therewith.

14.6.2 **Individual Parking Units/Non-Shared Parking Facilities**. The Hotel Unit Owner shall be responsible for (i) the operation, maintenance, cleaning and upkeep, placement and upkeep of signage for, and striping of those portions of the Non-Shared Parking Facilities; (ii) the Individual Parking Condominiums; and (iii) all Parking Shared Facilities located adjacent to the Non-Shared Parking Facilities and the Individual Parking Condominiums, labeled as "**Hotel/IPC Parking Maintenance Areas**" on **Exhibit "D"** and shall bear all costs incurred in connection therewith; (iv) the payment of all separately-metered gas, water, and/or other utility costs designated for service of the Hotel/IPC Parking Maintenance Areas only (the "**Parking Facilities Utilities Costs**"); and (v) purchasing and maintaining the Required Coverages for the Garage Limited Common Elements as part of the Common Community Coverages (the "**Garage LCE Insurance Costs**"). Despite these Hotel Unit Owner

obligations, the Parking Facilities Utilities Costs and the Garage LCE Insurance Costs shall be shared, billed and allocated among the Garage Stakeholders, as set forth in Section 14.6.4 below.

14.6.3 **Garage Limited Common Elements.** The Association shall be responsible for undertaking all structural/improvements repair and/or replacement (specifically including all capital improvement and capital replacement work) of the Garage Limited Common Elements (the "**Garage LCE Maintenance**"). Despite this Association work obligation, all costs of such Garage LCE Maintenance (the "**Garage LCE Maintenance Costs**") shall be shared, billed and allocated among the Garage Stakeholders, as set forth in Section 14.6.4 below.

14.6.4 **Allocation of Parking Facilities Costs**. All Parking Facilities Utilities Costs, Garage LCE Insurance Costs, and Garage LCE Maintenance Costs shall be allocated among the Garage Stakeholders, as follows (collectively, the "**Parking Facilities Costs**"):

14.6.4.1 The Town Parking Condominium Owner shall bear 54.22% of the Parking Facilities Costs;

14.6.4.2 The Hotel Unit Owner shall bear 37.34% of the Parking Facilities Costs; and

14.6.4.3 The Individual Parking Condominium Owners shall each bear 0.4447% of the Parking Facilities Costs (collectively 8.44%).

14.6.5 **Parking Facilities Costs Budgeting Process**.

14.6.5.1 The Hotel Unit Owner and the Association shall use best faith efforts to jointly prepare and submit to each other, by no later than September 30th annually, an annual budget detailing the various components of projected Parking Facilities Costs for the following year (the "**Parking Facilities Budget**"). This proposed Parking Facilities Budget shall be approved by the Town (by no later than December 15th annually) and then incorporated into the Association's Annual Budget. In the event that the proposed Parking Facilities Budget is rejected at an Association meeting at which the Annual Budget is considered by at least 40% of the Garage Stakeholders (based on the cost-sharing ratios set forth in Section 14.6.4 above), then those Parking Facilities Costs included within the Association's Annual Budget and/or such Parking Facilities Budget shall revert to the previous year's amounts (adjusted to reflect any increase in the Consumer Price Index for the Denver-Boulder-Greeley region from the previous calendar year) until such time as at least 60% of the Garage Stakeholders (based on the cost-sharing ratios set forth in Section 14.6.4 above) approve a different amount.

14.6.5.2 Notwithstanding the foregoing Section 14.6.5.1, in the event that an emergency maintenance, repair, and/or replacement situation occurs in connection with the Garage Limited Common Elements which creates a dangerous condition and/or requires immediate attention (without time or opportunity for consultation by and with the Garage Stakeholders), the Association shall be authorized to perform immediately any reasonable, appropriate emergency maintenance, repair, and/or replacement work with respect to the Garage Limited Common Elements, with all costs incurred in connection therewith being shared and allocated among the Garage Stakeholders, according to the ratios set forth in Section 14.6.4 above, as Parking Facilities Costs.

14.7 **Garage Ramp/Tunnel Maintenance and Costs**.

14.7.1 **Operation, Maintenance, Repair and/or Replacement**.

14.7.1.1 The Town Parking Condominium Owner shall be responsible for the operation, repair, maintenance and/or replacement of the Garage Ramp/Tunnel (the "**Garage Ramp/Tunnel Maintenance**"), with all costs associated therewith (the "**Garage Ramp/Tunnel Costs**"), being allocated and assessed among the Garage Stakeholders as follows:

14.7.2 **Allocation of Garage Ramp/Tunnel Costs**.

14.7.2.1 The Town Parking Condominium Owner shall bear 54.22% of the Garage Ramp/Tunnel Costs;

14.7.2.2 The Hotel Unit Owner shall bear 37.34% of the Garage Ramp/Tunnel Costs; and

14.7.2.3 The Individual Parking Condominium Owners collectively shall bear 8.44% of the Garage Ramp/Tunnel Costs, with each Individual Parking Condominium Unit allocated approximately 0.4447% per Individual Parking Condominium.

14.7.3 **Garage Ramp/Tunnel Costs Budgeting Process**.

14.7.3.1 The Town Parking Condominium Owner shall use best faith efforts to prepare and submit to the other Garage Stakeholders, by no later than September 30th annually, an annual budget detailing the various components of projected Garage Ramp/Tunnel Costs for the following year (the "**Garage Ramp/Tunnel Budget**"). This proposed Garage Ramp/Tunnel Budget shall be adopted and approved by the Town (by no later than December 15th annually) and then incorporated into the Association's Annual Budget. In the event that the proposed Garage Ramp/Tunnel Budget is rejected at an Association meeting at which the Annual Budget is considered by at least 40% of the Garage Stakeholders (based on the cost-sharing ratios set forth in Section 14.7.2 above), then those Garage Ramp/Tunnel Costs included within the Association's Annual Budget and/or such Garage Ramp/Tunnel Budget shall revert to the previous year's amounts (adjusted to reflect any increase in the Consumer Price Index for the Denver-Boulder-Greeley region from the previous calendar year) until such time as at least 60% of the Garage Stakeholders (based on the cost-sharing ratios set forth in Section 14.7.2 above) approve a different amount.

14.7.3.2 Notwithstanding the foregoing Section 14.7.3.1, in the event that an emergency maintenance, repair, and/or replacement situation occurs in connection with the Garage Ramp/Tunnel which creates a dangerous condition and/or requires immediate attention (without time or opportunity for consultation by and with the Garage Stakeholders), the Town Parking Condominium Owner shall be authorized to perform immediately any reasonable, appropriate emergency maintenance, repair, and/or replacement work with respect to the Garage Ramp/Tunnel, with all costs incurred in connection therewith being shared and allocated among the Garage Stakeholders, according to the ratios set forth in Section 14.7.2 above, as Garage Ramp/Tunnel Costs.

## ARTICLE 15
## THE HOTEL OPERATOR AND HOTEL OPERATIONS

15.1 **HOTEL OPERATIONS**. BY THE DEED OR OTHER CONVEYANCE OF TITLE TO THE UNIT(S) EACH OWNER UNDERSTANDS AND AGREES THAT THE HOTEL UNIT OWNER INTENDS (WITHOUT CREATING ANY OBLIGATION) TO RETAIN A HOTEL OPERATOR (THE "**HOTEL OPERATOR**") TO OPERATE THE HOTEL AND PROVIDE THE HOTEL SERVICES SET FORTH HEREIN, UNDER THE NAME AND STYLE OF "*TELLURIDE MOUNTAIN VILLAGE RESORT CONDOMINIUMS*" "*MADELINE HOTEL AND RESIDENCES*" AND/OR "*HOTEL MADELINE*" OR SIMILAR DESIGNATIONS. EACH OWNER FURTHER UNDERSTANDS AND AGREES THAT, IN THE EVENT THAT A HOTEL OPERATOR IS SO ENGAGED AND/OR CHANGED FROM TIME-TO-TIME BY THE HOTEL UNIT OWNER AND ANY AGREEMENT BETWEEN THE HOTEL UNIT OWNER AND THE HOTEL OPERATOR IS TERMINATED OR EXPIRES (FOR ANY REASON), ALL USE OF HOTEL OPERATOR'S TRADE NAME, TRADEMARK OR SERVICE MARKS SHALL CEASE AND ALL INDICIA OR CONNECTION BETWEEN THE COMMUNITY OR THE HOTEL UNIT OWNER AND THE HOTEL OPERATOR (INCLUDING SIGNS OR OTHER MATERIALS BEARING ANY OF THE HOTEL UNIT OWNER AND HOTEL OPERATOR'S TRADEMARKS OR SERVICE MARKS OR TRADE NAMES) SHALL TERMINATE AND/OR BE REMOVED FROM THE COMMUNITY AND HOTEL. ADDITIONALLY, EACH OWNER ACKNOWLEDGES AND AGREES THAT ANY USE OF ANY OF THE HOTEL UNIT OWNER OR HOTEL OPERATOR'S TRADE NAMES, TRADEMARKS OR SERVICE MARKS, AT ANY TIME AND FOR ANY PURPOSE, INCLUDING WITHOUT LIMITATION THE ADVERTISEMENT OR LISTING OF A UNIT FOR RENTAL, WITHOUT PROPER LICENSING FROM THE HOTEL UNIT OWNER OR HOTEL OPERATOR, IS EXPRESSLY AND

STRICTLY PROHIBITED. THE HOTEL OWNER AND HOTEL OPERATOR RESERVE THE RIGHT, IN THEIR DISCRETION, TO GRANT OWNERS AND THEIR QUALIFIED RENTAL PROGRAMS A LIMITED LICENSE TO USE THE NAME OF THE HOTEL IN CONNECTION WITH THE HOTEL MARKETING SERVICES.

15.2 **RESTRICTIONS AND LIMITATIONS ATTENDING HOTEL OPERATIONS**. THE HOTEL OPERATOR IS REQUIRED TO OPERATE THE HOTEL AND PROVIDE HOTEL EXCLUSIVE SERVICES IN ACCORDANCE WITH THE HOTEL DEED RESTRICTION AND THE STANDARDS. BY ACCEPTANCE OF THE DEED OR OTHER CONVEYANCE OF TITLE TO THE UNIT(S), EACH OWNER ACKNOWLEDGES, ACCEPTS AND AGREES THAT HE OR SHE AND ANY QUALIFIED RENTAL PROGRAM HE OR SHE ENGAGES WILL BE BOUND BY AND ADHERE TO, THE HOTEL UNIT OWNER AND HOTEL OPERATOR'S REQUIREMENTS REGARDING THE HOTEL SERVICES AND STANDARDS, AS WELL AS ANY RESULTING LIMITATIONS AND RESTRICTIONS THAT MAY RESULT THEREFROM. BY ACCEPTANCE OF THE DEED OR OTHER CONVEYANCE OF TITLE TO THE UNIT(S), EACH OWNER FURTHER ACKNOWLEDGES, ACCEPTS AND AGREES THAT HE OR SHE WILL ONLY UTILIZE (I) THE HOTEL OWNER; (II) THE HOTEL OPERATOR; OR (III) A QUALIFIED RENTAL PROGRAM FOR HOTEL MARKETING SERVICES.

## ARTICLE 16
## INSURANCE

16.1 **Required Coverages**. All Community Property is required to be covered by the following insurance coverages (the "**Required Coverages**"), which Required Coverages shall be purchased and maintained as set forth in Section 16.2 and 16.3 below:

16.1.1 **Casualty**. The Community Property shall be covered by blanket casualty and property damage replacement insurance (the "**Blanket Insurance**"). Such Blanket Insurance shall be obtained and maintained in an amount of not less than 100% of the full insurable replacement value of the covered Community Property (as adjusted from time-to-time), subject to no coinsurance, and on an "All Risk" basis, without deduction for depreciation. Every Blanket Insurance policy, if required by FNMA/FHLMC and generally available, shall have the following endorsements: (i) agreed amount and inflation guard, and (ii) steam boiler coverage (providing at least $5,000,000 coverage on a per occurrence basis), if applicable.

16.1.2 **Liability**. The Community Property shall be covered by comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Community Property, or any work, matters, or things related to the covered Community Property, with such coverage amounts as shall be required by the Hotel Unit Owner and/or Board (again in their sole and absolute discretion), but with a minimum single limit of $1,000,000 per occurrence and $2,000,000 in the aggregate. Each such policy shall contain a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa. An umbrella policy, which provides a minimum coverage of $10,000,000, may also be purchase to provide additional coverage. The Town shall be responsible for providing comprehensive general public liability coverage (or similar coverage) and automobile liability insurance in accordance with this section for the Town Improvements, which shall be the primary liability coverage for the Town Improvements.

16.1.3 **Wind Storm, Earthquake and Flood Insurance**. Wind storm, Earthquake, and flood insurance covering the Community Property if the Board and/or Hotel Unit Owner determine it to be desirable.

16.1.4 **Additional Coverages**. Such other coverages as the Board and/or the Hotel Unit Owner shall determine to be desirable from time-to-time, including the coverages set forth in Section 16.5 below.

16.2 **Common Community Coverages**. Due to the integrated nature of the Common Elements and the Units (including the Hotel Unit) in the Buildings and Improvements of the Community, rather than purchasing individual policies and to the extent permitted under the Act, the Hotel Unit Owner, the Association, and all Owners understand, agree, acknowledge and accept that the best interests of all parties are best met by having Hotel Unit Owner purchase and maintain the Required Coverages for the Common Elements, all Units, and all Association Property under one common policy (the "**Common Community Coverages**"). Accordingly, all Unit Owners

hereby designate and appoint the Hotel Unit Owner as agent and/or attorney-in-fact for each Owner with all powers and authority necessary to purchase and maintain the Common Community Coverages, and, by virtue of this appointment, create and/or convey an adequate insurable interest in and to the Hotel Unit Owner for purposes of allowing the Hotel Unit Owner to purchase and maintain such coverages. Additionally, all Owners hereby acknowledge and accept that all Common Community Coverages (i) shall not include any personal property coverages, and shall specifically exclude the Additional Required Unit Owners' Coverages (as defined below); and (ii) may be purchased and maintained by Hotel Unit Owner pursuant to a blanket and/or umbrella policy. However, nothing in this agency relationship precludes Owners from obtaining insurance coverages in addition to or above-and-beyond the Required Coverages required for in this ARTICLE 116, including any personal property insurance policies covering the personal contents and fixtures within their Units.

16.2.1 **Exclusions**. The Common Community coverages shall not include, and shall specifically exclude the following (the "**Unit Owners' Improvements**"): (i) all floor, wall and ceiling coverings, electrical fixtures, equipment, appliances, air conditioner and/or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing that are located within the boundaries of a Unit, other than the Hotel Unit; (ii) all furniture and furnishings, other than those located within the boundaries of the Hotel Unit; and (iii) other personal property owned, supplied or installed by (or on behalf of) Owners or tenants of Owners, other than the Hotel Unit Owner (and specifically excluding all Association Property).

16.2.2 **Deductibles**. Any Common Community Coverages policies may contain reasonable deductible provisions (as determined by the Hotel Unit Owner and/or Board, in their sole and absolute discretion), and shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time-to-time are customarily covered with respect to buildings, improvements, and facilities similar to those located within Community (including, but not limited to, vandalism and malicious mischief).

16.2.3 **Premiums**. Premiums upon all insurance policies obtained by the Hotel Unit Owner shall be paid by the Owners based on the portion of the costs attributable to their Units, as reasonably determined by the Hotel Unit Owner. The financing of premiums and/or the amount of appropriate deductibles shall be determined by the Board, in good faith consultation with the Hotel Unit Owner. Each Owner, by acceptance of a deed or other conveyance of a Unit, hereby ratifies and confirms any decisions made by the Board (and/or the Hotel Unit Owner) in this regard and recognizes and agrees that funds to cover the deductible must be provided from the general operating funds of the Association before the Association will be entitled to insurance proceeds. The Board may, but shall not be obligated to, establish a reserve to cover any applicable deductible.

16.2.4 **Additional Costs**. Intentionally deleted.

16.2.5 **Insurance Providers**. All Common Community Coverages shall be issued by either an insurance company authorized to do business in the State of Colorado or by reputable surplus lines carriers offering policies for property located in the State of Colorado, with an A.M. Best rating of no less than A-, VIII.

16.2.6 **Custody of Policies and Payment of Proceeds**. All Common Community Coverages shall provide that payments for losses made by the insurer shall be paid to the Hotel Unit Owner, and that all Common Community Coverages and endorsements shall be deposited with the Hotel Unit Owner (who shall hold these on behalf of all additional named insured parties).

16.3 **Purchase and Maintenance of Town Improvements Coverages**. The Town shall purchase and maintain all liability coverage for the Town Improvements in accordance with the Town's municipal insurance coverage and shall further ensure that the Additional Required Unit Owners' Coverages are obtained and maintained for the Town Improvements. Town Improvement Owners shall be required to provide to the Hotel Unit Owner and the Association either a copy of the insurance policy or policies in effect or certificates of insurance, evidencing that the coverages required to be obtained and maintained are in place and cannot be cancelled without 30 days' advance notice to both the Association and the Hotel Unit Owner. To the extent that the Town has insurance coverage in place that provides coverage for the Town Improvements, such policies shall be the primary policies for purposes of the Town Improvements.

16.3.1 The Hotel Unit Owner, the Association, and the Hotel Operator shall each separately be named as additional insured parties on all Required Coverages for the Town Improvements.

16.3.2 All insurance policies issued to Owners of Town Improvements shall provide that (i) all covered losses shall be first apportioned in full to such policies; and (ii) any additional or overlapping policies covering the same property shall be excess over the amount recoverable under such policies, without rights of subrogation against either the Association or the Hotel Unit Owner.

16.4 **Additional Required Unit Owners' Coverages**. In addition to the Required Coverages, all Unit Owners, including the Town Improvements, shall be required to purchase and maintain (i) general liability coverages on their Unit(s) with a minimum single limit of $1,000,000 per occurrence or such other appropriated amounts for the Town Improvements as determined by the Town; and (ii) property damage replacement insurance coverages on any Unit Owners' Improvements located within their Unit(s) insuring the full replacement value of any such Unit Owners' Improvement (together, the "**Additional Required Unit Owners' Coverages**"). All Unit Owners shall be required to provide to the Hotel Unit Owner and the Association either a copy of the insurance policy or policies in effect or certificates of insurance, evidencing that the Additional Required Unit Owners' Coverages are in place and cannot be cancelled without 30 days' advance notice to both the Association and the Hotel Unit Owner.

16.4.1 The Hotel Unit Owner, the Association, and the Hotel Operator shall each separately be named as additional insured parties on all Additional Required Unit Owners' Coverages.

16.4.2 All insurance policies issued with respect to the Additional Required Unit Owners' Coverages shall provide that (i) all covered losses shall be first apportioned in full to such policies, and (ii) any additional or overlapping policies covering the same property shall be excess over the amount recoverable under such policies, without rights of subrogation against either the Association or the Hotel Unit Owner.

16.4.3 In the event that Unit Owners fails to obtain and/or maintain in full force and effect any Additional Required Unit Owners' Coverages, the Hotel Unit Owner, in its sole and absolute discretion, shall be authorized, but not obligated, to purchase and/or obtain policies providing the Additional Required Unit Owners' Coverages on behalf of such Owner, with all premiums and additional costs and/or expenses incurred in connection therewith being charged to the Owner as a Special Assessment.

16.5 **Association Coverages**. In addition to the Common Community Coverages, all Unit Owners hereby designate and appoint the Hotel Unit Owner as their agent to purchase and maintain the following coverages on behalf of the Association:

16.5.1 **Directors and Officers Errors and Omissions**. The Association may direct the Hotel Unit Owner to purchase and maintain directors and officers insurance if desired and/or required und the Act, covering all directors, officers and employees of the Association, for claims arising out of their alleged "wrongful acts" and/or liabilities for errors and/or omissions on behalf of the officers and/or directors of the Association, both jointly and individually.

16.5.2 **Fidelity Insurance or Fidelity Bonds**. At the discretion of the Board, the Hotel Unit Owner and/or as required by the Act, the Hotel Unit Owner shall purchase and maintain adequate insurance or fidelity bonding of all Persons who control or disburse Association funds and/or pay Hotel Shared Facilities Expenses including, without limitation, all individuals authorized to sign Association checks and/or handle funds relating to Hotel Shared Facilities Expenses. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board (in good faith consultation with the Hotel Unit Owner and Hotel Operator, if any), or as otherwise required by the Act, to be sufficient to cover the maximum funds that are contemplated to be in the custody of the Association, the Hotel Unit Owner, the Association Manager and/or the Hotel Operator at any one time. The premiums on such bonds and/or insurance funds shall be paid by the Association, as Common Expenses.

16.6 **Workers' Compensation Coverages**. Hotel Unit Owner shall purchase, on its own behalf with respect to the Hotel Unit and on behalf of the Association with respect to the Common Elements and all Association and Community Property, including any portions thereof located within the boundaries of any Units, workers' compensation insurance, including employer's liability, and other mandatory insurance to the extent applicable to the maintenance, operation, repair or replacement of the Hotel Unit and the Community, in amounts at least equal to the minimum statutory amounts. Notwithstanding the foregoing, all Owner's Unit Work shall be insured by the Owner of the Unit.

16.7 **Additional Requirements**.

16.7.1 **Waiver of Subrogation; Coverage Required**. When appropriate and obtainable, all insurance policies obtained by the Hotel Unit Owner pursuant to this ARTICLE 16 shall waive the insurer's right to: (i) subrogation against the Association, the Hotel Unit Owner, and against the Owners individually and as a group (and their respective employees, contractors and agents); (ii) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Board or the Hotel Unit Owner (or any of their respective employees, contractors and/or agents), an individual Director on the Board, one or more Owners, or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized and that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Association and/or the Hotel Unit Owner and that the policy shall be primary even if an Owner has other insurance that covers the same loss. To the extent obtainable, all policies of insurance shall provide that such policies may not be cancelled or substantially modified without at least 30 days prior written notice to all of the named insureds and additional insureds. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board and/or the Hotel Unit Owner may (or if required by FNMA/FHLMC, shall) obtain an appraisal from a fire insurance company, or other competent insurance appraiser, of the full insurable replacement value of the Community Property (except the Town Improvements), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this ARTICLE 16.

16.7.2 **Insured Parties**. All insurance policies obtained by the Hotel Unit Owner pursuant to this ARTICLE 16 shall specify that (i) the Hotel Unit Owner shall be the primary named insured party, with the Association and the Hotel Operator named as additional insured parties for all coverages insuring the Hotel Unit; and (ii) the Association shall be the primary named insured party, with all Unit Owners, the Hotel Unit Owner, and the Hotel Operator as additional insured parties for all coverages insuring the (x) the Common Elements, (y) all Units (except the Hotel Unit and the Town Improvements), and (z) the Association Property.

16.7.3 **Share of Proceeds**. All insurance policies obtained by the Hotel Unit Owner pursuant to this ARTICLE 16 shall provide that all proceeds covering property losses shall be paid to the Hotel Unit Owner. The Hotel Unit Owner shall receive such proceeds of property insurance as are paid and hold the same in trust for the purposes herein stated (for the benefit of the Association and the Owners, and any First Mortgagees) and disburse the proceeds as herein provided. Except as otherwise provided herein, insurance proceeds on account of damage to the Community Property (except the Town Improvements) shall be held in the following shares (but shares need not be set forth on the records of the Hotel Unit Owner), and disbursed in accordance therewith:

16.7.4 **Insured Property**. Proceeds on account of damage to the Community Property (except the Town Improvements) shall be held in undivided shares for each Owner, such shares being the same as each Unit's Allocated Interest.

16.7.5 **Mortgagees**. After the first sale of a Unit in the Community, no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Restated Declaration.

16.8 **Distribution of Proceeds for the Blanket Insurance**. The proceeds of the Blanket Insurance policies covering the Community Property shall be distributed by the Hotel Unit Owner to or for the benefit of the beneficial parties and/or named insureds in the following manner:

16.8.1 **Expenses of the Hotel Unit Owner as Trustee of Insurance Proceeds**. All third-party and actual out-of-pocket expenses and fees of the Hotel Unit Owner relating to administration of the insurance proceeds pursuant to this ARTICLE 16 (if any) shall be first paid or provision shall be made therefor.

16.8.2 **Reconstruction, Repair, and/or Replacement**. If the damaged property for which the proceeds are paid is to be reconstructed, repaired and/or replaced, the proceeds shall be paid to defray the costs of such reconstruction, repair and/or replacement as elsewhere provided in this Restated Declaration. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners thereof, remittances to Owners and their mortgagees being payable jointly to them.

16.8.3 **Failure to Reconstruct, Repair, and/or Replace**. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed, repaired, and/or replaced the remaining proceeds shall be allocated among the beneficial Owners as provided in Section 16.7.3 above, and/or as otherwise required by the Act.

16.8.4 **Certificate**. In making distributions to Owners, the Hotel Unit Owner may rely upon a certificate of the Association, made by its President and Secretary, for purposes of determining the names of the Owners entitled to such distributions, as well as with respect to the respective shares of the distribution allocable to the Owners.

16.9 **Distribution of Proceeds for Liability Coverages**. The proceeds of any liability coverages paid to Hotel Unit Owner shall be distributed and/or applied by Hotel Unit Owner in consultation with the Board, in their reasonable discretion.

16.10 **Hotel Unit Owner as Agent**. The Hotel Unit Owner is hereby irrevocably appointed as agent and attorney-in-fact for each Owner and for each holder of a mortgage or other lien upon a Unit and for each owner of any other interest in the Community Property to adjust all claims arising under insurance policies purchased by or on behalf of the Hotel Unit Owner pursuant to this ARTICLE 16 and to execute and deliver releases upon the payment of such claims.

16.11 **Presumption as to Damaged Property**. In the event of a dispute or lack of certainty as to whether damaged property is part of the Community Property or the Hotel Unit, such property shall be presumed to be part of the Hotel Unit, unless otherwise reasonably determined by the Board.

## ARTICLE 17
## RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY

17.1 **Determination to Reconstruct, Repair, and/or Replace**. Subject to the immediately following paragraphs, in the event of damage to or destruction of the Community Property as a result of fire or other casualty, the Community Property shall be reconstructed, repaired and/or replaced. The Association shall arrange for the prompt reconstruction, repair, and/or replacement of the Community Property (except for the Town Improvements), and Hotel Unit Owner shall disburse the proceeds of the Blanket Insurance covering the Community Property policies to the contractors engaged in the reconstruction, repair, and/or replacement of the Community Property, and shall consult and cooperate with the Town in connection with the Town Improvements, in appropriate progress payments as set forth in Section 17.4 and the balance, if any, as set forth in Section 17.4.

However, if 67% or more of the Community Property is substantially damaged or destroyed, and if Owners holding at least 67% of the total Voting Interests duly and promptly resolve not to proceed with the reconstruction, repair, and/or replacement thereof, the Community Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Owner, mortgagee or lienor, as if the Community Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Owners in proportion to their respective interests in the Common Elements, and among affected Owners in proportion to the damage suffered by each such affected Owner, as determined in the sole discretion of the Association; provided, however, that no payment shall be made to an Owner until there has first been paid off

out of his share of such fund all mortgages and liens on his/her/its Unit in the order of priority of such mortgages and liens.

17.2 **Plans and Specifications**. Any reconstruction, repair, and/or replacement of the damaged Community Property must be made substantially in accordance with the plans and specifications for such property approved by the Board and the Hotel Unit Owner, and in accordance with the Town Requirements and then-applicable building code and other codes.

17.3 **Reconstruction, Repair, and/or Replacement Responsibility of Owners**. If damage is to those parts of the Community Property for which the responsibility of insurance is that of the respective Owners, then the Owner of such damaged property shall be responsible for all necessary reconstruction, repair, and/or replacement, which shall be effected promptly and in consultation with the Hotel Unit Owner and Board. In the event the Owners of such damaged property fail to adequately reconstruct, repair, and/or replace such property as required pursuant to this Restated Declaration and, Hotel Unit Owner shall have the right to arrange for such reconstruction, repair, and/or replacement the damaged property, with all costs associated therewith being charged to the beneficial Owner.

17.4 **Disbursement**. Promptly after any damage to or destruction of the Community Property (except to the extent that the Town Improvements are separately insured) as a result of fire or other casualty, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair. The proceeds of insurance collected on account of a casualty to the Community Property (except to the extent the Town Improvements are separately insured), and the sums collected from Owners on account of such casualty, shall constitute a construction fund which shall be disbursed by the Association in payment of the costs of reconstruction and repair in the following manner and order:

17.4.1 **Lesser Damage**. If the amount of the estimated costs of reconstruction and repair of the Community Property (except to the extent the Town Improvements are separately insured) is less than $100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Association.

17.4.2 **Major Damage**. If the amount of the estimated costs of reconstruction and repair of the Community Property (except to the extent the Town Improvements are separately insured) is more than $100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Section 17.4.1 above, but then only upon the further approval of an architect or engineer qualified to practice in Colorado and employed by the Association and/or Hotel Unit Owner to supervise the work.

17.4.3 **Surplus**. It shall be presumed that the first moneys disbursed in payment of the costs of reconstruction, repair, and/or replacement shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of reconstruction, repair, and/or replacement for which the construction fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

17.5 **Special Assessments**. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction, repair, and/or replacement of the Community Property, or if at any time during reconstruction, repair, and/or replacement, or upon completion of such reconstruction, repair, and/or replacement, the funds for the payment of the costs of such reconstruction, repair, and/or replacement are insufficient, Special Assessments shall be made against the Owners in sufficient amounts to provide funds for the payment of such costs. Such Special Assessments on account of damage to the Community Property shall be allocated in accordance with the Allocated Common Expenses and Voting Interests. The Town shall be solely responsible for the costs of reconstruction, repair and/or replacement of the Ice Rink Unit, Plaza Unit and Town Parking Condominium Unit.

## ARTICLE 18
## CONDEMNATION

18.1 **Deposit of Awards with Insurance Trustee**. To the degree so insured and/or permissible under Colorado law, the taking of all or portions of the Community Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and, the awards for that taking of the Community Property (excluding the Hotel Unit) shall be deemed to be proceeds from insurance on account of the casualty of Community Property and shall be deposited with the Association. Even though the awards may be payable to Owners, the Owners (other than the Hotel Unit Owner) shall deposit the awards with the Association; and in the event of failure to do so, in the discretion of the Association, a charge shall be made against a defaulting Owner in the amount of the Owner's award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

18.2 **Determination Whether to Continue Community**. Whether the Community will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

18.3 **Disbursement of Funds**. If the Community is terminated after condemnation, the proceeds of the awards and any Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds as if the Community is terminated after a casualty. If the Community is not terminated after condemnation, the size of the Community will be reduced and the Community Property damaged by the taking will be made usable in the manner provided below. The proceeds of awards with respect to the taking of the Community Property and any Special Assessments shall be used for these purposes and shall be disbursed in the manner in this ARTICLE 18.

18.4 **Unit Reduced but Habitable**. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable in accordance with the Standards (as determined by the Hotel Unit Owner and the Association, or if relating to the Hotel Unit as determined by the Hotel Unit Owner only), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Community and this Restated Declaration:

18.4.1 **Restoration of Unit**. The Unit shall be made habitable in accordance with the Standards. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the applicable Owner.

18.4.2 **Distribution of Surplus**. The balance of the award in respect of the Unit, if any, shall be (i) if relating to a Unit other than the Hotel Unit, distributed to the applicable Owner and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagee; or (ii) if relating to the Hotel Unit, retained by the Hotel Unit Owner.

18.4.3 **Adjustment of Allocated Interest**. If the floor area of the Unit is reduced by the taking, the Unit's Allocated Interests and Allocated Common Expenses and Voting Interests shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The respective Allocated Common Expenses and Voting Interests of all Units shall then be restated as follows:

(i) the respective square feet of each Unit shall be calculated to reflect any reduction, resulting from the taking; and

(ii) this adjusted square footages then shall be divided by the total square feet of all Units, also calculated to reflect all reductions resulting from the taking.

The adjusted Allocated Interests for each Unit shall be determined, based on the foregoing division calculation.

18.5 **Unit Made Uninhabitable**. If the taking affects the entirety of the Hotel Unit, or so reduces the size of the Hotel Unit that it becomes nonfunctional (as determined by the Hotel Unit Owner, in its sole and absolute discretion), then the award for the taking of the Hotel Unit shall be paid to, and retained by, the Hotel Unit Owner. With respect to Units other than the Hotel Unit, if the taking affects the entire Unit or so reduces the size of the Unit that it cannot be made habitable in accordance with the Standards (as determined by the Hotel Unit Owner and the Board), then the award for the taking of the Unit shall be used for the following purposes in the order stated (with the following changes shall be made to the Community Documents):

18.5.1 **Payment of Award**. The awards for each taken/uninhabitable Unit shall be paid (i) first, to the applicable First Mortgagee, if any, in amounts sufficient to pay off their mortgages on the Unit; (ii) second, to the Association for any due and unpaid Assessments with respect to the Unit; (iii) third, jointly to the affected Owners and any other mortgagees or lien claimants on the Unit, if any. In no event shall the total of such distributions attributable to any specific Unit exceed the fair market value of the Unit immediately prior to the taking. The balance of any proceeds in excess of such fair market value, if any, shall be applied first to repairing and replacing the Common Elements affected by the takings (if any), and any balance thereafter, if any, shall be disbursed to the Hotel Unit Owner for repair and replacement any Shared Facilities affected by the takings.

18.5.2 **Addition to Common Elements and/or Shared Facilities**. The remaining portion of any taken/uninhabitable Unit, if any, shall become part of the Common Elements or Shared Facilities (as determined by the Board and the Hotel Unit Owner) and shall be placed in a condition allowing, to the greatest extent reasonably possible, for use by all of the Owners in the manner deemed best by the Hotel Unit Owner and Board, in their reasonable discretion. The foregoing notwithstanding, should the cost for work needed to achieve this condition should exceed the balance of the fund generated by the award for the taking, the excess costs for such work shall be assessed to the remaining Owners as Common Expenses and/or Limited Common Expenses for Shared Facilities Expenses (as applicable).

18.5.3 **Adjustment of Allocated Interests and Allocated Common Expenses and Voting Interests**. The Allocated Interests and Allocated Common Expenses and Voting Interests appurtenant to the Units that continue as part of the Community shall be adjusted to distribute the reallocated percentages in the Allocated Interests and Allocated Common Expenses and Voting Interests among the reduced number of Owners (and associated reduced number of Units). The respective reallocated Allocated Interests and Allocated Common Expenses and Voting Interests of all Owners shall then be restated as follows:

(i) the respective square feet of each Unit shall be calculated to reflect any reduction, resulting from the taking; and

(ii) this adjusted square footage amount then shall be divided by the total square feet of all Units, also calculated to reflect all reductions resulting from the taking.

18.5.4 **Arbitration**. If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and mortgagees of the Unit and Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall consist of two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Owners, including Owners who will not continue after the taking, in proportion to the applicable Allocated Interest of such Owners as they exist prior to the adjustments to such Allocated Interests effected pursuant hereto by reason of the taking.

18.6 **Taking of Common Elements**. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board and the Hotel Unit Owner; provided, however, that should the cost for work needed to achieve this condition should exceed the balance of the fund generated by the award for the taking, the excess costs for such work shall be assessed to the remaining Owners as Common Expenses. The balance of the awards for the taking of Common Elements shall be distributed to the Owners according to their adjusted Allocated Interests resulting by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagee of the Unit.

18.7 **Amendment of this Restated Declaration**. The changes in (a) Units and Common Elements, (b) the ownership of the Common Elements, and (c) the share in the Common Expenses and Common Surplus that result from the taking shall be evidenced by an amendment to this Restated Declaration, the Community Map and/or any other pertinent Community Documents, which shall require only the written approval by a majority of the Board of the Association.

## ARTICLE 19
## COMPLIANCE AND DEFAULT

19.1 **Compliance and Default**. The Association and each Owner and Occupant shall be governed by, and shall comply with, all terms, requirements and restrictions of the Community Documents. The provisions of all of the Community Documents shall be deemed incorporated into every lease and sublease of a Unit, whether or not expressly stated in such lease or sublease. The Association (and Owners, if appropriate) shall be entitled to the remedies and relief described in this ARTICLE 19, in addition to any other remedies provided by the Act, the Nonprofit Act and or/otherwise.

19.2 **Non-Compliance**. All Owners and Occupants shall be liable for the expense of any maintenance, repair or replacement to the Community Property and Shared Facilities made necessary by the action or inaction on the part of such Owner or Occupant(s) and/or any of family members, guests, invitees, employees, agents, lessees or contractors, but only to the extent that such expense is not met by the related insurance proceeds actually collected by the Association. In the event any Owner or Occupant fails to (i) maintain or cause a Unit in accordance with the Standards; or (ii) comply with all of the provisions of the Community Documents, then the Association shall have the right to (a) proceed in equity to require performance and/or compliance with the applicable documents; (b) impose any applicable fines; (c) sue at law for damages; and/or (d) charge the Owner or Occupant for the sums necessary to perform whatever work is required to place the Owner and/or Unit in compliance with the applicable provisions of any Community Documents. In any proceeding arising because of an alleged failure of any Owner or Occupant to comply with the requirements of the Act, the Nonprofit Act and/or the Community Documents, the prevailing party shall be entitled to recover the costs of the proceeding and its reasonable attorneys' fees (including appellate attorneys' fees) and any expert witness fees. An Owner prevailing in an action in which the Association is an adverse party shall be entitled to recover additional amounts necessary to reimburse the Owner for his/her/its share of Assessments levied by the Association to fund its expenses of the litigation, in accordance with the Act.

19.3 **Fines**. In addition to any and all other remedies available, the Association may, through the Board and in accordance with procedures and rules and regulations adopted by the Board, impose a fine or fines upon an Owner for failure of such Owner, his/her/its Occupants, family, guests, invitees, lessees, employees or contractors, to comply in any way with the Community Documents. Such fines shall constitute a Reimbursement Assessment and shall be included in the Assessments Lien.

19.4 **The Hotel Unit Owner Curative Right**. In addition to the rights specified in this Restated Declaration, and due to the Town Requirements and the intended Hotel Services and Standards, in the event that the Association does not perform or otherwise enforce any covenant, restriction or provision in the Community Documents, the Hotel Unit Owner shall have the right (after written notice and at least 30 days opportunity to cure given to the Association; except in the case of an emergency, in which event no notice or cure period shall apply) to perform and/or enforce such covenant, restriction or provision instead of the Association, as if the Hotel Unit Owner were the Association hereunder and at the cost and expense of the Association, which costs and expenses may be assessed by the Association against the applicable Owner or Owners. In the event that the Hotel Unit Owner shall exercise the rights set forth in this Section 19.4, then the Hotel Unit Owner shall be entitled to all rights and remedies otherwise granted to the Association in the Community Documents and/or the Act, in addition to all other rights and remedies available to the Hotel Unit Owner at law or in equity.

## ARTICLE 20
## TERMINATION OF THE COMMUNITY

The Community shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Restated Declaration; or (ii) such time as withdrawal of the Community Property

from the provisions of the Act is authorized by Owners holding at least 67% of the Allocated Interests. Notwithstanding the foregoing, the Community cannot be terminated without the written consent of the Hotel Unit Owner. In the event such withdrawal is authorized, the Community Property shall be subject to an action for partition by any Owner, mortgagee or lienor as if owned in common, in which event the net proceeds of the partition sale shall be divided among all Owners in accordance with their Unit(s)' Allocated Interests; provided, however, that no payment shall be made to an Owner until there has first been satisfied out of his/her/its share of such net proceeds all mortgages and liens on the Owner's Unit in the order of their priority. Any termination of the Community, contemplated by this ARTICLE 20 shall be evidenced by a certificate of the Association executed by its President and Secretary certifying the basis for the Community termination, which certificate shall be recorded in the Official Records. This ARTICLE 20 may not be amended without the written consent of the Hotel Unit Owner and the Hotel Unit Owner's first lien mortgage holder (if any).

## ARTICLE 21
## AMENDMENTS

Except as elsewhere provided herein, amendments to this Restated Declaration may be effected as follows:

21.1 **By the Association**. Except as otherwise provided herein or the Act, this Restated Declaration may only be amended by the affirmative vote of Owners holding 51% or more of the Voting Interests. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

21.1.1 Notwithstanding the foregoing, the Owners shall not enact any amendment to this Restated Declaration pursuant to this Section 21.1 that shall have a material adverse impact on the Owner(s) of the Town Improvements, without the consent of such Owner(s) of the Town Improvements.

21.1.2 No amendment may change the configuration or size of Hotel Condominium Units, without the Town's prior written approval in accordance with the Hotel Condominiums Reconfiguration Restrictions. In no event shall any amendment violate or contravene any Town Requirements, without the Town's prior written approval.

21.1.3 Notwithstanding the foregoing or any provision in this Restated Declaration to the contrary, the Hotel Unit Owner, acting alone, reserves to itself the right and power (i) to correct clerical, typographical or technical errors; (ii) to modify and amend this Restated Declaration to comply with the requirements, standards, or guidelines of state department of real estate, real estate commission or other similar state agency or any governmental authority having jurisdiction over the Community; and (iii) to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association or the federal national mortgage association.

21.2 **Mortgagee's Consent**. Except as specifically provided elsewhere herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Restated Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.

21.3 **Amendments Affecting the Town**. No amendment may be adopted to the Community Documents that would permit any matter prohibited by the Town Requirements (except and only to the extent that the Town grants its prior written consent).

21.4 **Amendments Affecting the Hotel Unit and/or the Hotel Unit Owner**. No amendment may be adopted to the Community Documents that would eliminate, modify, prejudice, conflict with, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Hotel Unit Owner, the Hotel Unit or any other Unit owned by the Hotel Unit Owner pursuant to this Restated Declaration, without the prior written consent of the Hotel Unit Owner. Further, if any proposed amendment to any portion of the Community Property or Community Documents shall propose to eliminate or substantially prejudice or limit

material rights granted in this Restated Declaration to any First Mortgagee on the Hotel Unit (or risk doing so), then no such amendment shall be adopted without the written consent of such Hotel Unit First Mortgagee, or without otherwise complying with the requirements of Section 38-33.3-219 of the Act governing secured lender approval rights and the noticing and publication obligations contained therein.

21.5 **Execution and Recording**. An amendment to this Restated Declaration, pursuant to the Act or this Restated Declaration, shall be executed by a duly authorized officer of the Association and shall only become effective when the applicable amendment is properly recorded in the Official Records.

## ARTICLE 22
## ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS

22.1 **Availability of Community Documents**. The Association shall maintain current copies of the Community Documents and the books, records and financial statements of the Association for review by Owners at a reasonable time and upon reasonable notice

22.2 **Notices**. Any holder, insurer or guarantor of a mortgage on a Unit shall have the right, upon written request to the Association, to timely written notice of:

22.2.1 any condemnation or casualty loss affecting a material portion of the Community Property or the affected mortgaged Unit;

22.2.2 a 60-day delinquency in the payment of the Assessments on a mortgaged Unit;

22.2.3 the occurrence of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

## ARTICLE 23
## COVENANT RUNNING WITH THE REAL PROPERTY

ALL PROVISIONS OF THIS RESTATED DECLARATION SHALL, TO THE EXTENT APPLICABLE AND UNLESS OTHERWISE EXPRESSLY HEREIN PROVIDED TO THE CONTRARY, BE PERPETUAL AND BE CONSTRUED TO BE COVENANTS RUNNING WITH THE COMMUNITY PROPERTY AND UNITS AND WITH EVERY PART THEREOF AND INTEREST THEREIN. FURTHER, ALL OF THE PROVISIONS OF THE COMMUNITY DOCUMENTS SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE ASSOCIATION AND THE OWNERS, JOINTLY AND SEVERALLY, AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS, BUT THE SAME ARE NOT INTENDED TO CREATE, NOR SHALL THEY BE CONSTRUED AS CREATING, ANY RIGHTS IN OR FOR THE BENEFIT OF THE GENERAL PUBLIC. ALL PRESENT AND FUTURE OWNERS AND OCCUPANTS SHALL BE SUBJECT TO AND SHALL COMPLY WITH THE PROVISIONS OF THE COMMUNITY DOCUMENTS. THE ACCEPTANCE OF A DEED OR CONVEYANCE, OR THE ENTERING INTO OF A LEASE, OR THE ENTERING INTO OCCUPANCY OF ANY UNIT, SHALL CONSTITUTE THE ACKNOWLEDGEMENT, ACCEPTANCE AND RATIFICATION OF THE COMMUNITY DOCUMENTS.

## ARTICLE 24
## ACKNOWLEDGMENTS OF OWNER

EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF A UNIT, UNDERSTANDS AND AGREES THAT THERE ARE VARIOUS METHODS FOR CALCULATING THE SQUARE FOOTAGE OF A UNIT, AND THAT DEPENDING ON THE METHOD OF CALCULATION, THE QUOTED SQUARE FOOTAGE OF THE UNIT MAY VARY BY MORE THAN A NOMINAL AMOUNT. ADDITIONALLY, AS A RESULT OF FIELD CONSTRUCTION, OTHER PERMITTED CHANGES TO THE UNIT, AND SETTLING AND SHIFTING OF IMPROVEMENTS, ACTUAL SQUARE FOOTAGE OF A UNIT MAY ALSO BE AFFECTED.

BY ACCEPTING TITLE TO A UNIT, THE OWNER(S) SHALL BE DEEMED TO HAVE CONCLUSIVELY AGREED TO ACCEPT THE SIZE AND DIMENSIONS OF THE UNIT DEPICTED ON THE MAP AND SET FORTH IN THIS RESTATED DECLARATION, REGARDLESS OF ANY VARIANCES IN THE SQUARE FOOTAGE FROM THAT WHICH MAY HAVE BEEN DISCLOSED AT ANY TIME PRIOR TO CLOSING OR AS MAY BE CALCULATED USING A DIFFERENT METHOD OF CALCULATION.

## ARTICLE 25
## MISCELLANEOUS PROVISIONS

25.1 **REVIEW OF RESTATED DECLARATION**. EACH OWNER IS ADVISED TO RETAIN INDEPENDENT LEGAL AND TAX COUNSEL TO REVIEW THIS RESTATED DECLARATION AND THE COMMUNITY DOCUMENTS. BY ACCEPTANCE OF A DEED TO A UNIT, EACH OWNER ACKNOWLEDGES THAT THE OWNER HAS SOUGHT AND RECEIVED SUCH INDEPENDENT REVIEW AND ADVICE OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH INDEPENDENT REVIEW.

25.2 **NO LIABILITY; WAIVER OF CLAIMS**. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE COMMUNITY DOCUMENTS, NEITHER THE ASSOCIATION NOR THE HOTEL UNIT OWNER SHALL BE LIABLE OR RESPONSIBLE FOR, OR BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY, WELFARE OR SECURITY OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE COMMUNITY PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

25.2.1 IT IS THE EXPRESS INTENT OF THE COMMUNITY DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF THAT ARE ENFORCEABLE BY THE ASSOCIATION AND/OR THE HOTEL UNIT OWNER AND THAT GOVERN OR REGULATE THE USES OF THE COMMUNITY PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE COMMUNITY PROPERTY AND THE VALUE THEREOF AND COMPLIANCE WITH THE TOWN REQUIREMENTS;

25.2.2 NEITHER THE ASSOCIATION NOR THE HOTEL UNIT OWNER IS EMPOWERED, OR HAS BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF COLORADO, COUNTY, TOWN AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES;

25.2.3 THE PROVISIONS OF THE COMMUNITY DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS AND/OR SHARED FACILITIES EXPENSES THAT RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENTS FUNDS, AND NOT AS CREATING A DUTY OF THE ASSOCIATION OR THE HOTEL UNIT OWNER TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON, EVEN IF ASSESSMENTS FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON; AND

25.2.4 EACH OWNER (BY VIRTUE OF SUCH OWNER'S ACCEPTANCE OF TITLE TO A UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING USE OF, ANY PORTION OF THE COMMUNITY PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION AND/OR THE HOTEL UNIT OWNER ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION, AND/OR THE HOTEL UNIT OWNER HAS BEEN DISCLAIMED HEREBY. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL RELIEVE THE ASSOCIATION OF ITS DUTY OF ORDINARY CARE, AS ESTABLISHED BY THE ACT AND/OR NONPROFIT ACT, IN CARRYING OUT THE POWERS AND DUTIES SET FORTH HEREIN. AS USED HEREIN, "*ASSOCIATION*" AND "*HOTEL UNIT OWNER*" SHALL INCLUDE WITHIN ITS MEANING ALL OF THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS, NOMINEES AND/OR ASSIGNS.

25.3 **NO JURY TRIAL**. BY ACCEPTANCE OF A DEED TO A UNIT, EACH OWNER AGREES THAT THE COMMUNITY DOCUMENTS ARE VERY COMPLEX AND ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WITH RESPECT TO ANY CLAIM, CROSS CLAIM, ACTION OR PROCEEDING, WHETHER IN CONTRACT AND/OR TORT, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMMUNITY DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ANY OMISSION OF ANY PARTY, SHOULD BE HEARD IN A COURT PROCEEDING BY A JUDGE, AND NOT A JURY, IN ORDER TO BEST SERVE JUSTICE. AS A RESULT, BY ACCEPTANCE OF A DEED TO A UNIT, EACH OWNER AGREES TO WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION.

25.4 **MIXED-USE PROJECT**. THE COMMUNITY IS A MIXED-USE CONDOMINIUM PROJECT WHICH MAY, BUT NOT NECESSARILY, INCLUDE RETAIL, RESTAURANT, HOTEL AND OTHER COMMERCIAL OR PUBLIC FACILITIES. OWNING PROPERTY IN A MIXED-USE PROJECT WITH COMMERCIAL AND PUBLIC FACILITIES HAS ADVANTAGES AS WELL AS DISADVANTAGES. THE DISADVANTAGES INCLUDE, BUT ARE NOT LIMITED TO, CROWDS, DISTURBANCES, LIGHTS, NOISE, INTERRUPTIONS, LOSS OF PRIVACY, TRAFFIC CONGESTION AND CROWDED PARKING FACILITIES, DURING DAY AND EVENING HOURS, RESULTING FROM THE GENERAL PUBLIC'S USE OF HOTEL, RESTAURANT, RETAIL, IF ANY, AND OTHER FACILITIES WITHIN THE COMMUNITY. THERE MAY ALSO BE PUBLIC EVENTS AND FESTIVALS HELD WITHIN THE COMMUNITY. EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE, ACKNOWLEDGES THE ADVANTAGES AND DISADVANTAGES OF LIVING IN A MIXED-USE PROJECT SUCH AS THE COMMUNITY.

25.5 **Approval of Association Lawsuits by Owners**. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Owners holding at least 67% of the total Voting Interests. This Section 25.5 shall not, however, apply to: (i) actions brought by the Association to enforce the provisions of the Community Documents (including, without limitation, the foreclosure of liens or enforcement of any Community Rules and Regulations, if any); (ii) the imposition and collection of Assessments as provided in this Restated Declaration and the Act; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against the Association.

25.6 **Notices**. All notices to the Association required or desired to be given pursuant to the Community Documents shall be sent by certified mail (return receipt requested) to the Association in care of its office on the Community Property or at the principal and/or office address of the Association as set forth in the records of the Colorado Secretary of State, or to such other address as the Association may subsequently designate from time-to-time by written notice to all Owners and First Mortgages or recorded in the Official Records. Except as provided specifically in the Act and/or the Nonprofit Act, all notices to any Owner shall be sent by first class mail to the mailing address of such Owner, or such other address as may have been designated by the Owner from time-to-time, in writing, to the Association. If an Owner provides an email address to the Association, the Association may send notices to the Owner at the email address provided by the Owner. Owners are responsible for providing updated mailing and email addresses to the Association. Any notices to mortgagees of Units shall be sent by certified mail (return receipt requested) to their respective addresses, or such other address as may be designated by them from time-to-time, in writing to the Association. All notices shall be deemed to have been given when such notices are placed in a prepaid sealed envelope and either placed in the United States Mail or delivered to a reputable private carrier (i.e. Federal Express). Any notices to the Hotel Unit Owner and/or the Hotel Operator shall be sent by certified mail (return receipt requested) to the addresses on file with the Association.

25.7 **Interpretation**. The Board shall be responsible for interpreting the provisions of this Restated Declaration, which interpretation shall be binding upon all parties unless wholly unreasonable or contradictory to any other provisions of this Restated Declaration. The validity of such interpretation shall be conclusively established by (i) an opinion of legal counsel that the interpretation adopted by the Board is reasonable; and (ii) an opinion of the Hotel Unit Owner that the interpretation adopted by the Board is not contradictory to any other provisions of this Restated Declaration.

25.8 **Mortgagees**. Anything in this Restated Declaration to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit and may assume that every Unit is free of any related encumbrances, unless written notice of the existence of such encumbrance is provided to the Association, in accordance with the provisions of Section 25.6.

25.9 **Exhibits**. All materials contained in **Exhibit "A"**, **Exhibit "B"**, **Exhibit "C"**, **Exhibit "D"** and **Exhibit "E"** hereto are hereby incorporated into this Restated Declaration.

25.10 **Governing Law**. The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Restated Declaration. Any legal action brought in connection with this Restated Declaration shall be commenced in the District Court for San Miguel County, and by acceptance of a deed to a Unit, each Owner voluntarily submits to the jurisdiction of such court.

25.11 **Severability**. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Restated Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

25.12 **Waiver**. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of this Restated Declaration, the Community Documents or the Act shall not constitute a waiver of the right to do so thereafter.

25.13 **Ratification**. Each Owner, by reason of having acquired ownership of a Unit (whether by purchase, gift, operation of law or otherwise), and each Occupant of a Unit, by reason of his or her occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of the Community Documents are fair and reasonable in all material respects.

25.14 **Execution of Documents; Attorney-in-Fact**. Each Owner, by reason of acceptance of a deed to such Owner's Unit, hereby agrees to execute all documents that may be required by any governmental agency in connection with the Association or Hotel Unit Owner and/or its Affiliates' repairs, upgrades and renovation of the Community. Further, each Owner hereby appoints the Hotel Unit Owner as such Owner's agent and attorney-in-fact to execute, on behalf of, and in the name of, such Owner, any and all such documents. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section 25.14 may not be amended without the prior written consent of the Hotel Unit Owner.

25.15 **Gender; Plurality**. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

25.16 **Captions**. The captions of this Restated Declaration are inserted only as a matter of convenience and for ease of reference. As a result, such captions in no way define or limit the scope of this Restated Declaration or any provision thereof.

25.17 **Covenant Against Discrimination**. Each Unit Owner and the Hotel Unit Owner herein covenants by and for itself, its successors and assigns, and all persons and entities claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, military status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Community, or any part thereof, nor shall any party or any person claiming under or through such party establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Unit Owners, lessees, subtenants, sublessees, or vendees in or of the Community. The foregoing covenants shall run with the land.

25.18 **Dispute Resolution**. All disputes not involving claims for or related to unpaid Assessments and arising under this Restated Declaration between the Association, Association Manager, Hotel Unit Owner and/or Hotel Operator, on the one hand, and any Unit Owner or authorized user of a Unit, on the other hand, shall be submitted to mediation as a precondition to the filing of any litigation. Any claim which any party has against another party pertaining to the matters set forth or referred to in this Restated Declaration must be presented by the

claiming party to the other within one (1) year of the date the claiming party knew or should have known of the facts giving rise to the claim. Unless the party against whom any claim is asserted waives the time limit set forth above, any claim not brought within the one-year period shall be waived and forever barred. The mediator selected by the parties to the mediation shall be neutral and impartial, knowledgeable as to the subject matter of the dispute and experienced in mediation. The mediator shall have at least ten (10) years' experience with mixed-use, high end resort projects. The cost of mediation, including the cost of the mediator, shall be borne by the parties participating in the mediation on an equal basis.

**(SIGNATURES ON FOLLOWING PAGE)**

**IN WITNESS WHEREOF**, this Restated Declaration has been duly approved by the Owners of 100% of the total Voting Interests within the Association at a meeting of the Owners held on January 26, 2015, who further directed and authorized the undersigned to execute, deliver and cause to be recorded this Restated Declaration, as of January 29, 2015.

**TMVRC OWNERS' ASSOCIATION, INC.,**
a Colorado nonprofit corporation

By: _____
Duncan Hogarth, President

STATE OF Colorado )
) ss.
COUNTY OF San Miguel )

Subscribed and sworn to before me this 26th day of January 2015 by Duncan Hogarth, as President of TMVRC Owners' Association, Inc., a Colorado nonprofit corporation.

My commission expires: 9-6-17.

Witness my hand and official seal.

STEPHANIE L. FANOS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19944005631
MY COMMISSION EXPIRES SEPTEMBER 6, 2017

_____
Notary Public

**CONSENT BY AND APPROVAL OF HOTEL UNIT OWNER:**

Madeline Property Owner, LLC,
a Delaware limited liability company

By: _____
Brent McLean, as attorney-in-fact for
Simon A. Hallgarten, Authorized Signatory

STATE OF Colorado )
) ss.
COUNTY OF San Miguel )

Subscribed and sworn to before me this 26th day of January 2015 by Brent McLean, as attorney-in-fact for Simon A. Hallgarten, Authorized Signatory of Madeline Property Owner, LLC, a Delaware limited liability company.

My commission expires: 9-6-17.
Witness my hand and official seal.

STEPHANIE L. FANOS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19944005631
MY COMMISSION EXPIRES SEPTEMBER 6, 2017

_____
Notary Public

**CONSENT BY AND APPROVAL OF TOWN OF MOUNTAIN VILLAGE:**

Town of Mountain Village, a Colorado home-rule municipality

By: _____
Kim Montgomery, Town Manager

STATE OF Colorado )
) ss.
COUNTY OF San Miguel )

Subscribed and sworn to before me this 27th day of January 2015 by Kim Montgomery, Town Manager, Town of Mountain Village, a Colorado home rule municipality.

My commission expires: 06/28/16
Witness my hand and official seal.

_____
Notary Public

Approved as to Form:

By: James Mahoney
Digitally signed by James Mahoney
DN: cn=James Mahoney, o=J. David Reed, P.C., ou, email=jmahoney@jdreedlaw.com, c=US
Date: 2015.01.27 14:21:27 -07'00'

James Mahoney, Assistant Town Attorney

ROBIN M. WATKINSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19964010389
My Commission Expires June 28, 2016

**EXHIBIT "A"**

**REAL PROPERTY DESCRIPTION**

Lot 38-50-51R, in accordance with the Plat recorded in Plat Book 1 at Page 4061, Reception No. 405665 in the records of the San Miguel County Clerk and Recorder,

San Miguel County,
State of Colorado.

**EXHIBIT "B"**

I. **ALLOCATED INTERESTS; AND**
II. **ALLOCATED COMMON EXPENSES AND VOTING RIGHTS**

**(See Attached)**

**EXHIBIT B**
**SUMMARY OF (I) ALLOCATED INTEREST IN COMMON ELEMENTS**
**(II) ALLOCATED COMMON EXPENSES AND VOTING INTERESTS**

| Unit Number | Hotel/Room Number | Total Square Footage | Allocated Interest in Common Elements | Total Square Footage | Allocated Common Expenses & Voting Rights |
|---|---|---|---|---|---|
| **A. COMMERCIAL UNITS** | | | | | |
| Civic Condominiums | | | | | |
| CC-1139, 1140 & 1141 (Lobby and Bathrooms) | | 852 | 0.17% | 852 | 0.20% |
| CC-1104 (Women's Bathroom) | | 365 | 0.07% | 365 | 0.08% |
| CC-1106, 1107 (Men's Bathroom) | | 379 | 0.08% | 379 | 0.09% |
| CC-1126 (Elevator Lobby) | | 190 | 0.04% | 190 | 0.04% |
| CC-1127, 1128, 1129, 1130 (Passenger & Service Elevator) | | 615 | 0.12% | 615 | 0.14% |
| CC-1131 (Water Feature Mechanical) | | 318 | 0.06% | 318 | 0.07% |
| CC-1132 (Town Loading Dock) | | 1,583 | 0.32% | 1,583 | 0.36% |
| CC-1142, 1143 & 1144 (Ice Rink Retail & Bathroom) | | 943 | 0.19% | 943 | 0.22% |
| CC-1145 (Zamboni Storage) | | 654 | 0.13% | 654 | 0.15% |
| CC-1147 (Compressor Back of House) | | 1,348 | 0.27% | 1,348 | 0.31% |
| CC-1201, 1202,1203 (Stairs) | | 572 | 0.12% | 572 | 0.13% |
| CC-1204 (Elevator Machine Room) | | 162 | 0.03% | 162 | 0.04% |
| **Sub-Total Civic Condominiums** | | **7,981** | **1.62%** | **7,981** | **1.83%** |
| Retail Condominiums | | | | | |
| Retail-101 | | 1,898 | 0.38% | 1,898 | 0.44% |
| Retail-102 | | 1,221 | 0.25% | 1,221 | 0.28% |
| Retail-103 | | 1,324 | 0.27% | 1,324 | 0.30% |
| Retail-105 | | 1,678 | 0.34% | 1,678 | 0.38% |
| Retail-108 | | 1,621 | 0.33% | 1,621 | 0.37% |
| Retail-112 | | 3,937 | 0.80% | 3,937 | 0.90% |
| Retail-113 | | 38 | 0.01% | 38 | 0.01% |
| Retail-114 | | 133 | 0.03% | 133 | 0.03% |
| Retail-136 | | 1,441 | 0.29% | 1,441 | 0.33% |
| Retail-146 | | 959 | 0.19% | 959 | 0.22% |
| **Sub-Total Retail Condominiums** | | **14,250** | **2.89%** | **14,250** | **3.27%** |
| **B. RESIDENCE, HOTEL AND EMPLOYEE CONDOMINIUMS** | | | | | |
| Residence Condominiums | | | | | |
| RC-202 | 1202 | 1,697 | 0.34% | 1,697 | 0.39% |
| RC-203 | 1203 | 1,294 | 0.26% | 1,294 | 0.30% |
| RC-204 | 1204 | 1,106 | 0.22% | 1,106 | 0.25% |
| RC-206 | 1206 | 935 | 0.19% | 935 | 0.21% |
| RC-207 | 1207 | 932 | 0.19% | 932 | 0.21% |
| RC-208 | 1208 | 981 | 0.20% | 981 | 0.22% |
| RC-209 | 1209 | 732 | 0.15% | 732 | 0.17% |
| RC-302 | 1302 | 1,569 | 0.32% | 1,569 | 0.36% |
| RC-303 | 1303 | 1,287 | 0.26% | 1,287 | 0.30% |
| RC-304 | 1304 | 1,014 | 0.21% | 1,014 | 0.23% |
| RC-305 | 1305 | 1,128 | 0.23% | 1,128 | 0.26% |
| RC-306 | 1306 | 1,287 | 0.26% | 1,287 | 0.30% |
| RC-307 | 1307 | 922 | 0.19% | 922 | 0.21% |
| RC-308 | 1308 | 918 | 0.19% | 918 | 0.21% |
| RC-330 | 338 | 2,354 | 0.48% | 2,354 | 0.54% |
| RC-331 | 339 | 2,259 | 0.46% | 2,259 | 0.52% |
| RC-332 | 334 | 1,513 | 0.31% | 1,513 | 0.35% |
| RC-333 | 337 | 1,735 | 0.35% | 1,735 | 0.40% |
| RC-335 | 333 | 2,152 | 0.44% | 2,152 | 0.49% |
| RC-336 | 331 | 1,495 | 0.30% | 1,495 | 0.34% |
| RC-402 | 1402 | 1,448 | 0.29% | 1,448 | 0.33% |
| RC-403 | 1403 | 1,250 | 0.25% | 1,250 | 0.29% |
| RC-404 | 1404 | 922 | 0.19% | 922 | 0.21% |
| RC-405 | 1405 | 1,049 | 0.21% | 1,049 | 0.24% |
| RC-406 | 1406 | 1,250 | 0.25% | 1,250 | 0.29% |
| RC-407 | 1407 | 855 | 0.17% | 855 | 0.20% |
| RC-408 | 1408 | 876 | 0.18% | 876 | 0.20% |
| RC-430 | 438 | 2,324 | 0.47% | 2,324 | 0.53% |
| RC-431 | 439 | 2,142 | 0.43% | 2,142 | 0.49% |
| RC-432 | 434 | 1,440 | 0.29% | 1,440 | 0.33% |
| RC-433 | 437 | 1,735 | 0.35% | 1,735 | 0.40% |
| RC-434 | 432 | 1,605 | 0.33% | 1,605 | 0.37% |
| RC-435 | 433 | 2,137 | 0.43% | 2,137 | 0.49% |

**EXHIBIT B**
**SUMMARY OF (I) ALLOCATED INTEREST IN COMMON ELEMENTS**
**(II) ALLOCATED COMMON EXPENSES AND VOTING INTERESTS**

| Unit Number | Hotel/Room Number | Total Square Footage | Allocated Interest in Common Elements | Total Square Footage | Allocated Common Expenses & Voting Rights |
|---|---|---|---|---|---|
| RC-436 | 431 | 1,496 | 0.30% | 1,496 | 0.34% |
| RC-502 | 1502 | 1,233 | 0.25% | 1,233 | 0.28% |
| RC-503 | 1503 | 2,246 | 0.46% | 2,246 | 0.52% |
| RC-504 | 1504 | 1,438 | 0.29% | 1,438 | 0.33% |
| RC-505 | 1505 | 1,239 | 0.25% | 1,239 | 0.28% |
| RC-506 | 1506 | 348 | 0.07% | 348 | 0.08% |
| RC-530 | 538 | 2,425 | 0.49% | 2,425 | 0.56% |
| RC-531 | 539 | 1,837 | 0.37% | 1,837 | 0.42% |
| RC-532 | 534 | 1,436 | 0.29% | 1,436 | 0.33% |
| RC-533 | 537 | 1,604 | 0.33% | 1,604 | 0.37% |
| RC-534 | 532 | 1,594 | 0.32% | 1,594 | 0.37% |
| RC-535 | 533 | 2,126 | 0.43% | 2,126 | 0.49% |
| RC-536 | 531 | 1,496 | 0.30% | 1,496 | 0.34% |
| RC-618 | 620 | 2,416 | 0.49% | 2,416 | 0.55% |
| RC-630 | 638 | 2,150 | 0.44% | 2,150 | 0.49% |
| RC-631 | 639 | 1,985 | 0.40% | 1,985 | 0.46% |
| RC-632 | 632 | 2,828 | 0.57% | 2,828 | 0.65% |
| RC-633 | 637 | 1,602 | 0.32% | 1,602 | 0.37% |
| RC-634 | 633 | 3,313 | 0.67% | 3,313 | 0.76% |
| RC-703 | 703 | 3,163 | 0.64% | 3,163 | 0.73% |
| RC-704 | 704 | 1,744 | 0.35% | 1,744 | 0.40% |
| RC-705 | 705 | 2,554 | 0.52% | 2,554 | 0.59% |
| RC-706 | 706 | 3,972 | 0.81% | 3,972 | 0.91% |
| RC-707 | 707 | 1,912 | 0.39% | 1,912 | 0.44% |
| RC-708 | 708 | 2,018 | 0.41% | 2,018 | 0.46% |
| RC-709 | 709 | 3,485 | 0.71% | 3,485 | 0.80% |
| RC-710 | 710 | 2,584 | 0.52% | 2,584 | 0.59% |
| **Sub-Total Residential Condominiums** | | **102,587** | **20.80%** | **102,587** | **23.52%** |
| <u>Hotel Condominiums</u> | | | | | |
| HC-301 | 301 | 464 | 0.09% | 464 | 0.11% |
| HC-302 | 302 | 737 | 0.15% | 737 | 0.17% |
| HC-303 | 303 | 490 | 0.10% | 490 | 0.11% |
| HC-304 | 304 | 519 | 0.11% | 519 | 0.12% |
| HC-305 | 305 | 592 | 0.12% | 592 | 0.14% |
| HC-306 | 306 | 498 | 0.10% | 498 | 0.11% |
| HC-307 | 307 | 546 | 0.11% | 546 | 0.13% |
| HC-308 | 308 | 516 | 0.10% | 516 | 0.12% |
| HC-309 | 309 | 496 | 0.10% | 496 | 0.11% |
| HC-310 | 310 | 493 | 0.10% | 493 | 0.11% |
| HC-311 | 311 | 510 | 0.10% | 510 | 0.12% |
| HC-312 | 312 | 502 | 0.10% | 502 | 0.12% |
| HC-313 | 313 | 494 | 0.10% | 494 | 0.11% |
| HC-314 | 314 | 935 | 0.19% | 935 | 0.21% |
| HC-315 | 315 | 482 | 0.10% | 482 | 0.11% |
| HC-316 | 316 | 505 | 0.10% | 505 | 0.12% |
| HC-317 | 317 | 484 | 0.10% | 484 | 0.11% |
| HC-318 | 318 | 572 | 0.12% | 572 | 0.13% |
| HC-319 | 319 | 616 | 0.12% | 616 | 0.14% |
| HC-320 | 320 | 560 | 0.11% | 560 | 0.13% |
| HC-321 | 321 | 583 | 0.12% | 583 | 0.13% |
| HC-322 | 322 | 621 | 0.13% | 621 | 0.14% |
| HC-323 | 323 | 519 | 0.11% | 519 | 0.12% |
| HC-325 | 325 | 589 | 0.12% | 589 | 0.14% |
| HC-327 | 327 | 508 | 0.10% | 508 | 0.12% |
| HC-329-L | 328 | 1,284 | 0.26% | 1,284 | 0.29% |
| HC-329-L | 329 | 616 | 0.12% | 616 | 0.14% |
| HC-334 | 330 | 608 | 0.12% | 608 | 0.14% |
| HC-343 | 330 | 886 | 0.18% | 886 | 0.20% |
| HC-401 | 401 | 464 | 0.09% | 464 | 0.11% |
| HC-402 | 402 | 661 | 0.13% | 661 | 0.15% |
| HC-403 | 403 | 490 | 0.10% | 490 | 0.11% |
| HC-404 | 404 | 462 | 0.09% | 462 | 0.11% |
| HC-405 | 405 | 592 | 0.12% | 592 | 0.14% |
| HC-406 | 406 | 498 | 0.10% | 498 | 0.11% |
| HC-407 | 407 | 546 | 0.11% | 546 | 0.13% |
| HC-408 | 408 | 516 | 0.10% | 516 | 0.12% |
| HC-409 | 409 | 496 | 0.10% | 496 | 0.11% |

**EXHIBIT B**
**SUMMARY OF (I) ALLOCATED INTEREST IN COMMON ELEMENTS**
**(II) ALLOCATED COMMON EXPENSES AND VOTING INTERESTS**

| Unit Number | Hotel/Room Number | Total Square Footage | Allocated Interest in Common Elements | Total Square Footage | Allocated Common Expenses & Voting Rights |
|---|---|---|---|---|---|
| HC-410 | 410 | 493 | 0.10% | 493 | 0.11% |
| HC-411 | 411 | 510 | 0.10% | 510 | 0.12% |
| HC-412 | 412 | 469 | 0.10% | 469 | 0.11% |
| HC-413 | 413 | 493 | 0.10% | 493 | 0.11% |
| HC-414 | 414 | 871 | 0.18% | 871 | 0.20% |
| HC-415 | 415 | 482 | 0.10% | 482 | 0.11% |
| HC-416 | 416 | 493 | 0.10% | 493 | 0.11% |
| HC-417 | 417 | 485 | 0.10% | 485 | 0.11% |
| HC-418 | 418 | 571 | 0.12% | 571 | 0.13% |
| HC-419-L | 419 | 1,047 | 0.21% | 1,047 | 0.24% |
| HC-419-L | 421 | 495 | 0.10% | 495 | 0.11% |
| HC-420 | 420 | 561 | 0.11% | 561 | 0.13% |
| HC-421 | 423 | 618 | 0.13% | 618 | 0.14% |
| HC-422 | 422 | 621 | 0.13% | 621 | 0.14% |
| HC-423 | 425 | 507 | 0.10% | 507 | 0.12% |
| HC-425 | 427 | 540 | 0.11% | 540 | 0.12% |
| HC-427 | 429 | 678 | 0.14% | 678 | 0.16% |
| HC-429 | 424 | 657 | 0.13% | 657 | 0.15% |
| HC-501 | 501 | 465 | 0.09% | 465 | 0.11% |
| HC-502 | 502 | 656 | 0.13% | 656 | 0.15% |
| HC-503 | 503 | 489 | 0.10% | 489 | 0.11% |
| HC-504 | 504 | 462 | 0.09% | 462 | 0.11% |
| HC-505 | 505 | 486 | 0.10% | 486 | 0.11% |
| HC-506 | 506 | 498 | 0.10% | 498 | 0.11% |
| HC-507 | 507 | 465 | 0.09% | 465 | 0.11% |
| HC-508 | 508 | 516 | 0.10% | 516 | 0.12% |
| HC-509 | 509 | 496 | 0.10% | 496 | 0.11% |
| HC-510 | 510 | 493 | 0.10% | 493 | 0.11% |
| HC-511 | 511 | 510 | 0.10% | 510 | 0.12% |
| HC-512 | 512 | 457 | 0.09% | 457 | 0.10% |
| HC-513 | 513 | 493 | 0.10% | 493 | 0.11% |
| HC-514 | 514 | 861 | 0.17% | 861 | 0.20% |
| HC-515 | 515 | 482 | 0.10% | 482 | 0.11% |
| HC-516 | 516 | 504 | 0.10% | 504 | 0.12% |
| HC-517 | 517 | 485 | 0.10% | 485 | 0.11% |
| HC-518-L | 520 | 1,138 | 0.23% | 1,138 | 0.26% |
| HC-518-L | 518 | 601 | 0.12% | 601 | 0.14% |
| HC-519-L | 519 | 1,173 | 0.24% | 1,173 | 0.27% |
| HC-519-L | 521 | 516 | 0.10% | 516 | 0.12% |
| HC-521-L | 525 | 1,272 | 0.26% | 1,272 | 0.29% |
| HC-521-L | 532 | 574 | 0.12% | 574 | 0.13% |
| HC-601 | 601 | 574 | 0.12% | 574 | 0.13% |
| HC-602 | 602 | 666 | 0.14% | 666 | 0.15% |
| HC-603 | 603 | 490 | 0.10% | 490 | 0.11% |
| HC-604 | 604 | 462 | 0.09% | 462 | 0.11% |
| HC-605 | 605 | 486 | 0.10% | 486 | 0.11% |
| HC-606 | 606 | 499 | 0.10% | 499 | 0.11% |
| HC-607 | 607 | 464 | 0.09% | 464 | 0.11% |
| HC-608 | 608 | 516 | 0.10% | 516 | 0.12% |
| HC-609 | 609 | 495 | 0.10% | 495 | 0.11% |
| HC-610 | 610 | 437 | 0.09% | 437 | 0.10% |
| HC-611 | 611 | 510 | 0.10% | 510 | 0.12% |
| HC-612 | 612 | 457 | 0.09% | 457 | 0.10% |
| HC-613 | 613 | 492 | 0.10% | 492 | 0.11% |
| HC-614 | 614 | 871 | 0.18% | 871 | 0.20% |
| HC-615 | 615 | 453 | 0.09% | 453 | 0.10% |
| HC-616 | 616 | 504 | 0.10% | 504 | 0.12% |
| HC-617 | 617 | 1,068 | 0.22% | 1,068 | 0.24% |
| HC-619 | 619 | 482 | 0.10% | 482 | 0.11% |
| HC-621 | 621 | 541 | 0.11% | 541 | 0.12% |
| HC-701 | 701 | 531 | 0.11% | 531 | 0.12% |
| HC-702 | 702 | 788 | 0.16% | 788 | 0.18% |
| **Sub-Total Hotel Condominiums** | | **58,419** | **11.85%** | **58,419** | **13.40%** |
| <u>Employee Condominiums</u> | | | | | |
| EC-105 | 1105 | 966 | 0.20% | 966 | 0.22% |
| EC-106 | 1106 | 934 | 0.19% | 934 | 0.21% |
| EC-201 | 201 | 706 | 0.14% | 706 | 0.16% |

**EXHIBIT B**
**SUMMARY OF (I) ALLOCATED INTEREST IN COMMON ELEMENTS**
**(II) ALLOCATED COMMON EXPENSES AND VOTING INTERESTS**

| Unit Number | Hotel/Room Number | Total Square Footage | Allocated Interest in Common Elements | Total Square Footage | Allocated Common Expenses & Voting Rights |
|---|---|---|---|---|---|
| EC-202 | 202 | 704 | 0.14% | 704 | 0.16% |
| EC-203 | 203 | 998 | 0.20% | 998 | 0.23% |
| EC-204 | 204 | 965 | 0.20% | 965 | 0.22% |
| EC-205 | 205 | 712 | 0.14% | 712 | 0.16% |
| EC-206 | 206 | 650 | 0.13% | 650 | 0.15% |
| EC-207 | 207 | 763 | 0.15% | 763 | 0.17% |
| EC-208 | 208 | 954 | 0.19% | 954 | 0.22% |
| **Sub-Total Employee Condominiums** | | **8,352** | **1.69%** | **8,352** | **1.92%** |
| **C. PARKING UNITS** | | | | | |
| **Town Parking Condominium** | | | | | |
| TPC (122 spaces) | | 22,377 | 4.54% | 0 | 0.00% |
| **Sub-Total Town Parking Condominiums** | | **22,377** | **4.54%** | **0** | **0.00%** |
| **Individual Parking Condominiums** | | | | | |
| IPC-1 | | 193 | 0.04% | 193 | 0.04% |
| IPC-2 | | 183 | 0.04% | 183 | 0.04% |
| IPC-3 | | 183 | 0.04% | 183 | 0.04% |
| IPC-4 | | 176 | 0.04% | 176 | 0.04% |
| IPC-5 | | 173 | 0.04% | 173 | 0.04% |
| IPC-6 | | 226 | 0.05% | 226 | 0.05% |
| IPC-7 | | 184 | 0.04% | 184 | 0.04% |
| IPC-8 | | 176 | 0.04% | 176 | 0.04% |
| IPC-9 | | 181 | 0.04% | 181 | 0.04% |
| IPC-10 | | 188 | 0.04% | 188 | 0.04% |
| IPC-11 | | 188 | 0.04% | 188 | 0.04% |
| IPC-12 | | 181 | 0.04% | 181 | 0.04% |
| IPC-13 | | 188 | 0.04% | 188 | 0.04% |
| IPC-14 | | 188 | 0.04% | 188 | 0.04% |
| IPC-15 | | 181 | 0.04% | 181 | 0.04% |
| IPC-16 | | 188 | 0.04% | 188 | 0.04% |
| IPC-17 | | 194 | 0.04% | 194 | 0.04% |
| IPC-18 (Employee 138) | | 214 | 0.04% | 214 | 0.05% |
| IPC-19 (Employee 139) | | 214 | 0.04% | 214 | 0.05% |
| **Sub-Total Employee Parking Condominiums** | | **3,599** | **0.73%** | **3,599** | **0.83%** |
| **D. HOTEL UNIT** | | | | | |
| Non-shared Facility | | 18,953 | 3.84% | 18,953 | 4.35% |
| Non-shared Parking Facility | | 15,243 | 3.09% | 15,243 | 3.50% |
| Hotel Shared Facility | | 53,737 | 10.90% | 53,737 | 12.32% |
| General Shared Facility | | 93,430 | 18.95% | 93,430 | 21.42% |
| Parking Shared Facility | | 59,541 | 12.07% | 59,541 | 13.65% |
| **Sub-Total Hotel Unit** | | **240,904** | **48.85%** | **240,904** | **55.24%** |
| **E. ICE RINK UNIT** | | | | | |
| Ice Rink Unit (IRU) | | 6,460 | 1.31% | 0 | 0.00% |
| **Sub-Total Ice Rink Unit** | | **6,460** | **1.31%** | **0** | **0.00%** |
| **F. PLAZA UNIT** | | | | | |
| Plaza Unit (PZU) | | 28,201 | 5.72% | 0 | 0.00% |
| **Sub-Total Plaza Unit** | | **28,201** | **5.72%** | **0** | **0.00%** |
| **ALLOCATED INTEREST TOTALS** | | **493,130** | **100.00%** | | |
| **ALLOCATED COMMON EXPENSES & VOTING RIGHTS TOTALS** | | | | **436,092** | **100.00%** |

**EXHIBIT "C"**

**SHARED FACILITIES ALLOCATIONS**

**(See Attached)**

**EXHIBIT C**
**SHARED FACILITIES ALLOCATIONS**

| | Square Footage | General Shared Facilities Allocation (1) (5) (6) | | Square Footage | Hotel Shared Facilities Allocation (2) (3) | | Units | Parking Shared Facilities Allocation (7) (8) | |
|---|---|---|---|---|---|---|---|---|---|
| **A. NON HOTEL UNITS** | | | | | | | | | |
| **Commercial Units** | | | **10.56%** | | | **n/a** | | | **n/a** |
| 1) Civic Condos | 7,981 | 3.79% | | n/a | | | n/a | | |
| 2) Retail Condos | 14,250 | 6.77% | | n/a | | | n/a | | |
| **Residential Units** | | | **80.44%** | | | **89.47%** | | | **0.00%** |
| 1) Residential Condos | 102,587 | 48.73% | | 102,587 | 57.01% | | n/a | | |
| 2) Hotel Condos | 58,419 | 27.75% | | 58,419 | 32.46% | | n/a | | |
| 3) Employee Condos | 8,352 | 3.97% | | n/a | | | n/a | | |
| **Parking Units** | | | **0.00%** | | | **n/a** | | | **18.45%** |
| 1) Town Parking Condo | n/a | | | n/a | | | n/a | | |
| 2) Individual Parking Condos | n/a | | | n/a | | | 19 | 18.45% | |
| **Ice Rink Unit** | | | **0.00%** | | | **n/a** | | | **n/a** |
| 1) Ice Rink Unit | n/a | | | n/a | | | n/a | | |
| **Plaza Unit** | | | **0.00%** | | | **n/a** | | | **n/a** |
| 1) Plaza Unit | n/a | | | n/a | | | n/a | | |
| **B. HOTEL UNIT - (Non-Shared Facility Only)** | | | **9.00%** | | | **10.53%** | n/a | | **81.55%** |
| 1) Non-Shared Facility | 18,953 | 9.00% | | 18,953 | 10.53% | | n/a | | |
| 2) Non-Shared Parking Facility | 0 | 0.00% | | n/a | | | 84 | 81.55% | |
| **TOTAL** | **210,542** | | **100%** | **179,959** | | **100%** | **103** | | **100%** |

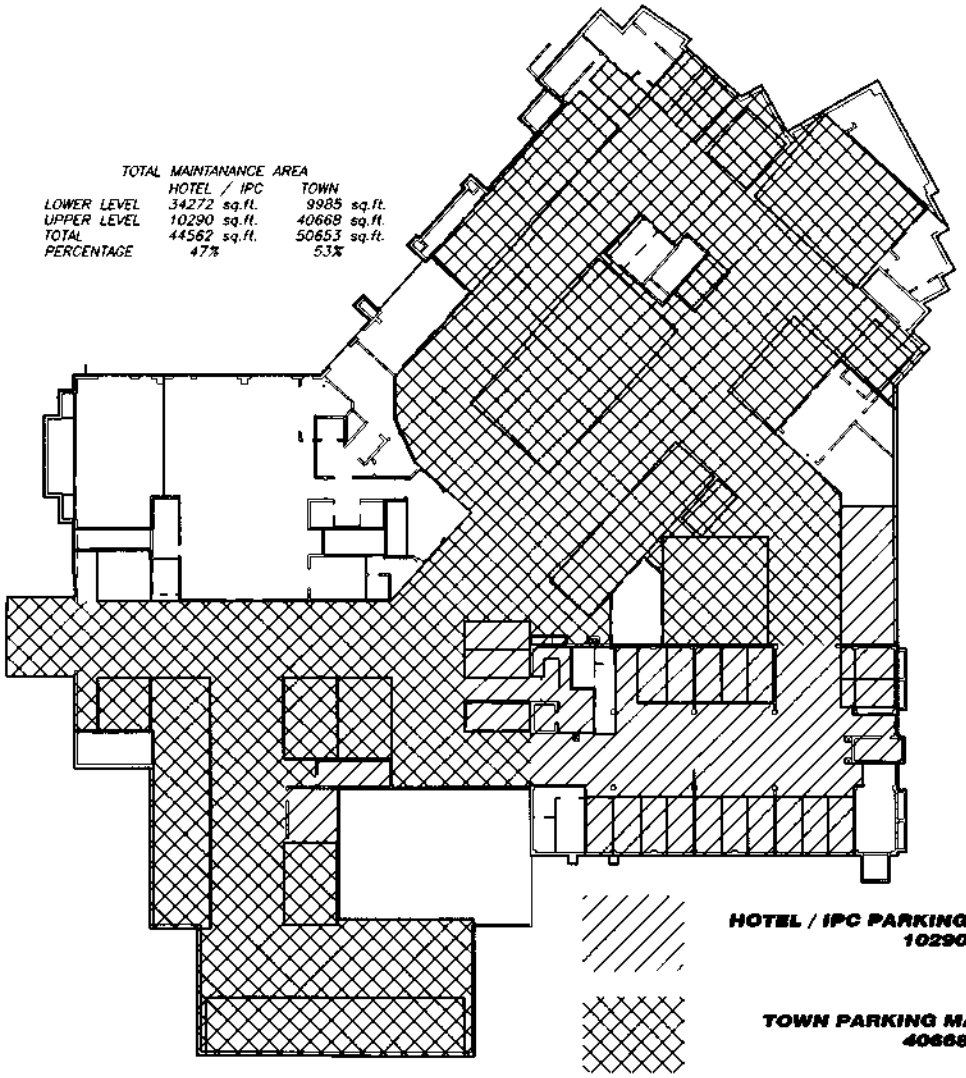
**EXHIBIT "D"**

**TOWN AND HOTEL/IPC PARKING MAINTENANCE AREAS**

**(See Attached)**

# EXHIBIT D

| TOTAL MAINTANANCE AREA | HOTEL / IPC | TOWN |
|---|---|---|
| LOWER LEVEL | 34272 sq.ft. | 9985 sq.ft. |
| UPPER LEVEL | 10290 sq.ft. | 40668 sq.ft. |
| TOTAL | 44562 sq.ft. | 50653 sq.ft. |
| PERCENTAGE | 47% | 53% |



**HOTEL / IPC PARKING MAINTENANCE AREA**
**10290 sq.ft.**

**TOWN PARKING MAINTENANCE AREA**
**40668 sq.ft.**

PARKING MAINTANENCE AREAS UPPER LEVEL PARKING

Condominium Map for Telluride Mountain Village Resort Condominiums, A Condominium Common Interest Community located on Lot 38-50-51R, within the Town of Mountain Village, County of San Miguel, State of Colorado

FOLEY Associates, Inc.
970-728-6153 970-728-6050 fax
P.O. BOX 1385
125 W. PACIFIC, SUITE B-1
TELLURIDE, COLORADO 81435

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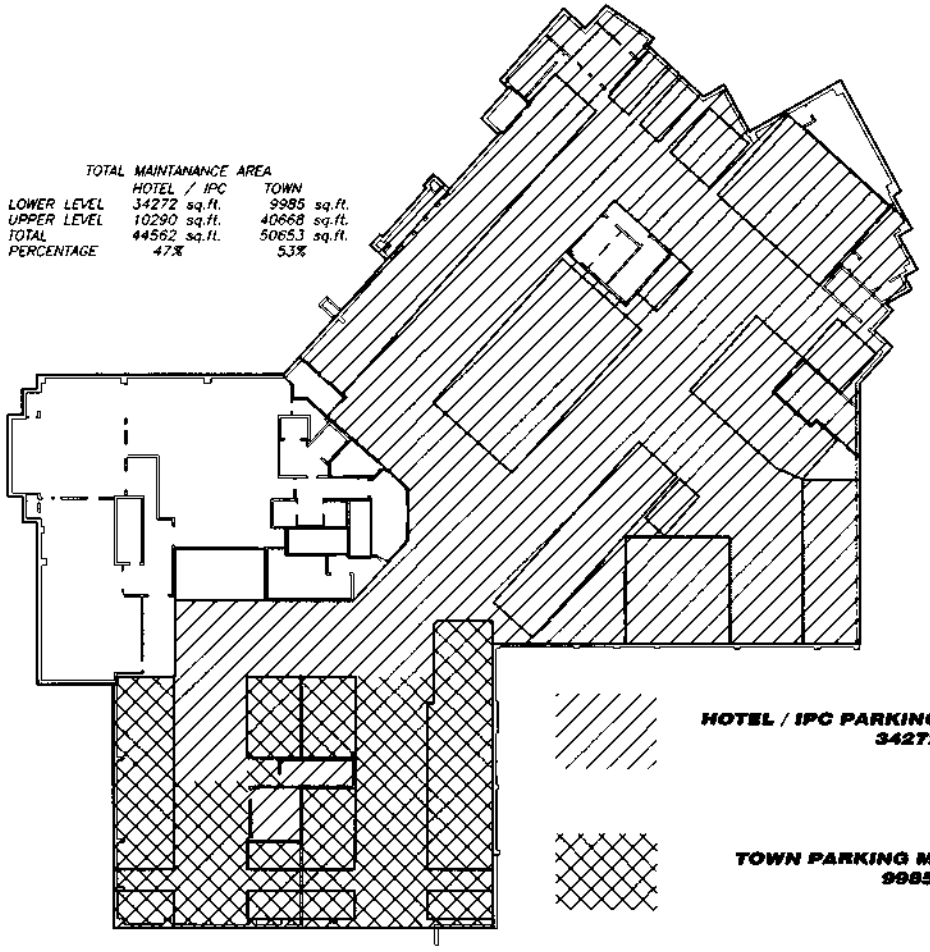
# EXHIBIT D

| TOTAL MAINTANANCE AREA | HOTEL / IPC | TOWN |
|---|---|---|
| LOWER LEVEL | 34272 sq.ft. | 9985 sq.ft. |
| UPPER LEVEL | 10290 sq.ft. | 40668 sq.ft. |
| TOTAL | 44562 sq.ft. | 50653 sq.ft. |
| PERCENTAGE | 47% | 53% |



**HOTEL / IPC PARKING MAINTENANCE AREA**
**34272 sq.ft.**

**TOWN PARKING MAINTENANCE AREA**
**9985 sq.ft.**

PARKING MAINTANENCE AREAS LOWER LEVEL PARKING

Condominium Map for Telluride Mountain Village Resort Condominiums, A Condominium Common Interest Community located on Lot 38-50-51R, within the Town of Mountain Village, County of San Miguel, State of Colorado

FOLEY
970-728-6153 970-728-6050 fax
PO BOX 1385
125 W. PACIFIC, SUITE B-1
TELLURIDE, COLORADO 81435

**EXHIBIT "E"**

**HOTEL EXCLUSIVE SERVICES**

**(See Attached)**

# EXHIBIT E

## HOTEL EXCLUSIVE SERVICES

In order to ensure compliance with the Town Requirements and the Standards, the Hotel Unit Owner must maintain control over the Hotel operations, services and facilities within the Community. The services listed below are an integral part of the Hotel operations and may only be provided and performed by the Hotel Unit Owner and/or Hotel Operator to or for all Residence Condominium and Hotel Condominium Units, in order to ensure and maintain uniform, orderly and high quality Hotel operations. The Owners of Residence Condominium and Hotel Condominium Units and their agents, employees and contractors are expressly prohibited from performing or engaging in any of the Hotel Exclusive Services. The Rules and Regulations supplement these Hotel Exclusive Services and establish the service fees and charges, which may be amended from time-to-time.

Hotel Unit Owner and/or Hotel Operator shall have the sole and exclusive right to provide the following services to all Residence Condominium and Hotel Condominium Units:

1. Accept reservations by, from and through the Unit Owner and/or its agents, including any Qualified Rental Program, for the use and occupancy of the Unit;

2. Establish and enforce check-in and check-out procedures for all Owner's and Owner's guests;

3. Housekeeping and cleaning services necessary or desired for the Units;

4. All routine repairs and maintenance services necessary or desired for the Units,

5. Valet parking services;

6. Pest control services;

7. Manage and maintain the Unit electronic locking system, and all associated keys, including issuance and replacement of room keys;

8. Collection of all service fees and other charges payable by the Owner to the Hotel Unit Owner or Hotel Operator for the provision of these Hotel Exclusive Services and any other individual charges incurred by or on behalf of the Owner;

9. Connect telephones in the Unit to the Hotel's telephone switchboard. All Units must utilize the Hotel's telephone systems;

10. Make arrangements for, or cause to be arranged, internet service and basic cable or satellite television service to the Unit utilizing the Hotel's cable or satellite system and such additional television services as Hotel Unit Owner and/or Hotel Operator may, from time to time determine, in its discretion. No separate internet, cable or satellite televisions services may be provided to the Units.

11. In accordance with the liquor license issued by the State of Colorado for the Community, the Hotel Unit Owner or Hotel Operator shall (i) operate mini-bars in the Units; and (ii) provide room service to the Units, which shall include the sale and dispensing of alcoholic beverages and food in the Unit. Unit Owners shall not engage in any activity within its Unit or any portion of the Community requiring a liquor license from the State of Colorado, without limitation, the sale of alcoholic beverages and food;

12. Such additional services and procedures as the Hotel Unit Owner and/or Hotel Operator may elect, from time to time, in order to maintain uniformity, quality, appropriate access restrictions, and ensure compliance with the Town Requirements and the Standards.

Nothing in this Exhibit "E" is intended to authorize Hotel Unit Owner and/or Hotel Operator to solicit, advertise, promote or rent a Unit. The Owner has the exclusive authority to arrange for the rental of the Owner's Unit in accordance with the Restated Declaration.

Notwithstanding anything to the contrary, the Hotel Unit Owner, Hotel Operator and the Hotel, shall not be liable for any loss of, damage to, or destruction of any of the personal property or physical improvements located within the Units and shall not have any obligation to protect against or take action to prevent the theft, damage or destruction of such personal property.

Except for the gross negligence or willful misconduct of any of the Indemnified Parties (as defined below), each Unit Owner hereby agrees to the fullest extent permitted by law, to defend, indemnify and hold the Hotel Unit Owner, the Hotel Operator, and all of their owners, affiliates and subsidiaries and their respective employees, officers, directors, owners, representatives, contractors and agents (collectively, "**Indemnified Parties**"), free and harmless from and against any and all acts, omissions, investigations, inquiries, liabilities, losses, damages, fines, obligations, penalties, demands, taxes, injuries, claims, causes of action, judgments, allegations, costs and expenses, including reasonable attorney's fees and costs (collectively, "**Claims**") arising and/or relating, directly or indirectly, from injury to person or property (including to the Unit and the property therein), or both, sustained by anyone in and about the Unit, and in connection with or arising from any cause in, on or about the Unit (including, but not limited to, a personal injury), Unit Owner's and Unit Owner's Guests' use of the Unit or the Community, from any breach or default in the performance of the Hotel Exclusive Services by the Indemnified Parties. Unit Owner hereby assumes all risk of damage to property or injury to persons in, upon or about the Unit from any cause, and Unit Owner hereby waives all claims in respect thereof against the Indemnified Parties, excepting where the damage is caused solely by the gross negligence or willful misconduct of the Indemnified Parties in the performance of the Hotel Exclusive Services.