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WESTWALL LODGE AT MT. CRESTED BUTTE
FIRST AMENDED AND RESTATED CONDOMINIUM
DECLARATION

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**FIRST AMENDED AND RESTATED CONDOMINIUM DECLARATION
FOR
WESTWALL LODGE AT MT. CRESTED BUTTE**

This first amended and restated condominium declaration (the "Restated Declaration") is made this 31st day of July, 2006, by WestWall Partners, LLC, a Colorado limited liability company ("Declarant") and WestWall Lodge at Mt. Crested Butte Condominium Association, Inc., a Colorado nonprofit corporation (the "Association").

Recitals

A. The undersigned, hereinafter called Declarant, is the Owner of that real property (the "Property") situated in the County of Gunnison, State of Colorado, formerly known as the T-Bar Tract and as more fully described in Exhibit A attached hereto and incorporated by reference herein.

B. Declarant desires to establish a mixed use condominium project pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101, et seq., (the "Act").

C. There is presently constructed upon and under the Property three buildings containing mixed use commercial and residential units consisting of separately designated air space units ("Condominium Units") and other improvements.

D. The condominium project known as the WestWall Lodge (the "Project") was created by the Condominium Declaration for WestWall Lodge at Mt. Crested Butte dated May 11, 2006 and recorded on May 12, 2006 as Reception No. 565088 in the records of Gunnison County, Colorado. The plat map of the Project was recorded on May 12, 2006 as Reception No. 565090 in the records of Gunnison County, Colorado and was certified in accordance with Section 201(2) of the Act. The May 11, 2006 Declaration shall be referred to herein as the "Declaration." The May 12, 2006 plat map shall be referred to herein as the original map. The Declaration covers the Property which is more particularly described in the Declaration and the original map. By means of the Declaration, Declarant submitted the Property to condominium ownership under the Colorado Common Interest Ownership Act (Article 33.3 of Title 38 of the Colorado Revised Statutes), as the same may be amended from time ("CIOA"), and imposed upon the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way and other provisions of the Declaration. Declarant was and remains the "Declarant" under the Declaration.

E. An amendment to the Declaration (the "First Amendment") dated May 24, 2006 was recorded by Declarant on May 24, 2006 at Reception No. 565451 in the records of Gunnison County, Colorado. The First Amendment was recorded under the provisions of Section 205(4) of CIOA which permits Declarant to amend the Declaration to correct clerical, typographical or technical errors. The First Amendment dealt with a typographical error in Section D (3) of Article XXIX of the Declaration.



F. At the time of the recording of the Declaration, the Map did not plat certain portions of the lobby area of Building A or Building C, all of which were still under construction. A First Supplemental Plat Map (the "First Supplemental Map"), which depicts the platted portions of Building A and Building C, was subsequently approved by the Town of Mt. Crested Butte and recorded by Declarant on July 26, 2006 at Reception No. 567302 in the records of Gunnison County, Colorado. The original map, the First Supplemental Map and any additional revisions or supplements thereto shall be referred to collectively as the "Map." In addition, an amendment to the Declaration (the "Second Amendment") dated July 22, 2006 was recorded by Declarant on July 26, 2006 at Reception No. 567301 in the records of Gunnison County, Colorado. The Second Amendment is permitted to be recorded by the provisions of the Declaration which require reallocation of ownership interests for each Unit whenever additional Units are added to the project.

G. On July 22, 2006, the Unit Owners, by voting in accordance with the requirements of the Act and the Association's governing documents, including a separate vote of the non-Declarant Owners, approved the development and operation of the WestWall Club by Declarant upon the WestWall Lodge Property. This action authorized the Declarant to perform additional construction in Building A as well as to establish the front desk and office areas adjacent to the lobby area and to reconfigure the underground parking garage spaces as described in the First Supplemental Plat Map. In addition, Declarant was authorized to construct additional improvements to be more fully defined and depicted in future supplements to the Map.

H. This Restated Declaration, which will be recorded in the records of Gunnison County, Colorado with a Second Supplemental Plat Map (the "Second Supplemental Map"), depicts and describes all of these improvements upon the Property. In addition, these documents contain additional provisions and platted areas delineating the location of the WestWall Club and the various easements which are transferred to or reserved by Declarant on behalf of the WestWall Club and which affect the Property. The Restated Declaration also describes the scope of the WestWall Club operations and its permitted activities upon the Property. In addition, the Restated Declaration establishes the relationship of the Declarant with the Association and the mutual responsibilities of the Declarant and the Association with respect to the operations of the WestWall Club.

I. The Restated Declaration also establishes and reserves certain development rights upon the Property in favor of the Declarant.

J. In this Restated Declaration, all capitalized words and phrases shall have the same meanings ascribed to them in the Act, subject to the express definitions in Article I below.

NOW, THEREFORE, Declarant hereby declares and publishes as follows:

**ARTICLE I
DEFINITIONS**

Each capitalized term as otherwise defined in this Restated Declaration or in the Revised Map shall have the same meanings specified or used in the Act. In addition to other defined terms contained herein, the following definitions apply to the real property at the time the same is submitted to condominium ownership under the provisions of this Restated Declaration ("Declaration") unless the context shall expressly provide otherwise.

- A. Articles of Incorporation. Means the Articles of Incorporation of the WestWall Lodge at Mt. Crested Butte Condominium Association, Inc., a Colorado non-profit corporation.
- B. WestWall Club. Means the WestWall Club which is a private membership club located within the Condominium Project as more fully described in the Revised Map and in Article XXIX of this Restated Declaration.
- C. Association. Means the WestWall Lodge At Mt. Crested Butte Condominium Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Articles of Incorporation and Bylaws for the Association shall govern the administration of this condominium property, the members of which shall be all of the Owners of the Condominium Units and the Declarant.
- D. Buildings. Means any or all of the buildings constructed upon the condominium property containing Units as shown on the Revised Map or amendments and supplements thereto.
- E. Bylaws. Means the Bylaws of the Association.
- F. Common Expense or Common Expense Assessment. Means and includes expenses for maintenance, repair, operation, management and administration as more fully described in Article XVI. Common Expense Assessment is further defined as a common expense liability under the Act, and Common Expense is further defined under the Act.
- G. Condominium Project. Means all of the real property improvements initially submitted to condominium ownership by this Restated Declaration and subsequently submitted, if any, as hereinafter provided.
- H. Condominium Unit. Means the fee simple interest in and to either the WestWall Club Unit or a residential Unit, together with the undivided percentage interest in the General Common Elements appurtenant to such Unit. Condominium Unit is further defined in the Act.
- I. Declarant Means and refers to WestWall Partners, LLC, a Colorado limited liability company, its successors and assigns.



- J. Executive Board. Means the governing body of the Association as defined under the Act.
- K. General Common Elements. Means and includes the real property described herein, the structural components of the Buildings, and all other parts of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air above such real property (except for the Units), all of which shall be owned by the Owners of the separate Units as tenants in common, each Owner of a Unit having an undivided percentage interest in such General Common Elements as is provided hereinafter, subject to any and all other applicable provisions of this Restated Declaration. The phrase General Common Elements is further defined in the Act.
- L. Limited Common Elements. Means those parts of the General Common Elements which are either limited to or reserved for the exclusive use of the Owners of one or more, but less than all, of the Condominium Units. As depicted in the Revised Map, portions of the front desk and office area in Building A are limited common elements appurtenant to the WestWall Club Unit. The phrase Limited Common Elements shall also include all spaces within the interior of a Unit which are above the height of eight (8) feet as measured vertically from the floor in any part of the interior of a Unit. This delineation shall be observed regardless of the actual height of the ceiling in any portion of a Unit, and the vertical limit boundary measurements within any Unit shall be established as eight (8) feet as measured from the floor of the Unit. All spaces and areas above the face of the drywall on the ceiling of any unit to the base of the supporting structural beams which are adjacent to the Unit shall be designated and considered to be General Common Elements.
- M. Management Company. Means the management company appointed by the Executive Board to provide staffing and management services on behalf of the Association, as more fully discussed in Article V below.
- N. Managing Agent or Manager. Means such agent, agents or employees of the Management Company who may be appointed by the Executive Board pursuant to the terms of this Restated Declaration.
- O. Map, Condominium Map, or Supplemental Map. Means and includes the original map, the First and Second Supplemental Maps, and all such supplements and revisions thereto (the "Map"). The Map which is an engineering survey of the real property required by the Act locating thereon all of the structural improvements, the floor and elevation plans of the Buildings and other improvements, and any other drawing or diagrammatic plan depicting a part or all of the improvements and land for the Association.
- P. Members. Means and refers to every person or entity who holds membership in the



Association by virtue of being an Owner (including the Declarant) as provided in Article VIII.

- Q. Owner. Means and refers to every person or entity who holds record title to a Unit.
- R. Rules and Regulations. Means the rules and regulations of the Association as promulgated, amended or supplemented from time to time by the Executive Board of the Association. The initial Rules and Regulations are attached hereto as Exhibit D.
- S. Special Common Elements. Means those parts of the General Common Elements which may be licensed by the Association to a Management Company or Managing Agent on an exclusive or nonexclusive basis, or which may be licensed to third parties by or through the Association.
- T. Unit. Means either a residential Condominium Unit or the WestWall Club Unit. A Unit is comprised of an individual air space which is contained within the windows, doors and unfinished perimeter walls, floors (or lower most floors, if it is an individual air space unit containing more than one level), and the ceilings (or the upper most ceilings, if it is an individual air space unit containing more than one level), of each Unit as provided in Section 38-33.3-202(1)(a) of the Act and as described and delineated on the Revised Condominium Map to be filed for record, together with all fixtures and improvements therein contained, but not including any of the Common Elements, if any, located within the Unit.
- U. WestWall Club Unit. Means the Unit in which the WestWall Club is presently located as depicted in the Second Supplemental Map and as elsewhere described in this Restated Declaration.

ARTICLE II CONDOMINIUM MAP

The Second Supplemental Map will be filed for record contemporaneously with this Restated Declaration. The Second Supplemental Map shall depict the location of both the horizontal and vertical boundaries of the WestWall Club Unit and other improvements as substantially completed. Portions of the Building C shall be subject to development rights for later submission in accordance with Article XXIII.

The Second Supplemental Map shall contain the certificate of a registered Colorado land surveyor or licensed architect, or both, certifying that it substantially depicts the location and the horizontal and vertical measurements of the Buildings, the Units, the Unit designations, the dimensions of the Units, the elevations of the unfinished floors and ceilings as constructed, each Building number or symbol, and that it was prepared subsequent to substantial completion of the improvements. In interpreting the Second Supplemental Map, the existing physical boundaries of each separate Unit as constructed

shall be conclusively presumed to be its boundaries.

ARTICLE III DIVISION OF PROPERTY INTO CONDOMINIUM UNITS.

- A. Condominium Units. The real property is or shall be divided into not more than forty-four (44) fee simple residential Units and one (1) WestWall Club Unit. Declarant specifically reserves the right to develop the Building C storage area as a limited common element appurtenant to the WestWall Club Unit within the time limitations set forth elsewhere in this Restated Declaration. Each Unit shall consist of the separately designated Unit and an undivided interest in and to the General Common Elements appurtenant to each Unit as is set forth in the attached Exhibit B, which by this reference is made a part hereof and which shall together comprise all of the Units. Each residential Unit is assigned one covered parking space and one storage space subject to the Declarant's reserved and contractual rights to place any unused parking space into the WestWall Club parking pool as described in Article XXIX. Each Unit shall be identified on the various maps by number and building symbol as shown on Exhibit B. Boundaries between Units may be changed, and a Unit may be subdivided into two or more Units in accordance with the procedures set forth in the Act and with the prior written consent of the Declarant, but such written consent shall only be required so long as the Declarant owns any real property in the Condominium Project.
- B. Title to Unit. A Condominium Unit may be held and owned by more than one person as joint tenants or as tenants in common or in any real property tenancy relationship recognized under the laws of the State of Colorado. A Condominium Unit may also be held and owned by an entity. A representative of the owner of each Condominium Unit shall register his or her mailing address with the Association along with other contact information including facsimile transmission numbers and e-mail addresses. All notices, assessment invoices and other communications may be sent to the owner of a condominium unit at either the registered mailing address or by facsimile or e-mail transmission according to the information provided to the Association by the owner's representative.
- C. WestWall Club Unit. Declarant reserves the right to complete the construction of the WestWall Club Unit and the Building C underground storage area within ten (10) years from the date of recording this Restated Declaration. The Declarant acknowledges that the WestWall Club unit has been established, and Declarant hereby retains ownership of this Unit. The WestWall Club Unit, when constructed, will be occupied by the WestWall Club as more particularly described in Article XXIX of this Restated Declaration. In addition, a portion of the front desk and office area in the lobby of Building A shall be a Limited Common Element appurtenant to the WestWall Club Unit as depicted in the Second Supplemental Map. The Declarant shall be the initial owner of the WestWall Club Unit.



**ARTICLE IV
DESCRIPTION OF CONDOMINIUM UNIT.**

A. Legal Description. After the Revised Condominium Map and this Restated Declaration have been recorded as aforesaid, every contract, deed, lease, Mortgage, deed of trust or other instrument may legally describe a residential Unit as follows:

Unit _____, together with the use of Parking Space No. _____ WestWall Lodge at Mt. Crested Butte, subject to the Revised Condominium Map and the Restated Condominium Declaration for the WestWall Lodge at Mt. Crested Butte Condominium Association, Inc., as recorded with the Clerk and Recorder of Gunnison County, Colorado.

A different legal description may be used for the WestWall Club Unit or any other commercial unit as described in a supplemental map, and Declarant shall have authority to record a Supplemental Map to establish such description. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit, but also the undivided interest in the General Common Elements appurtenant to said Unit and all other appurtenant properties and property rights, and incorporate all of the rights, limitations, and burdens incident to the Ownership or a Condominium Unit as described in this Restated Declaration and the Supplemental Maps. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from the applicable Unit and the use of all of the General Common Elements as well as all of the Limited and Special Common Elements.

B. Supplements. The reference to any of the Maps and to the Restated Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or the Supplemental Maps or the Restated Declaration, without specific reference thereto.

**ARTICLE V
OWNERSHIP AND USE OF
GENERAL COMMON ELEMENTS.**

A. Ownership. The General Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided. By the acceptance of the deed or other instrument or conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action

designed to cause a division of the General Common Elements and each Owner specifically agrees not to institute any action therefore. Further, each Owner agrees that this Article may not be pled as a bar to the maintenance of such action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association incurs in connection therewith.

- B. Use. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners, subject to such reasonable rules and regulations as may, from time to time, be established pursuant to the Bylaws of the Association. Further, the use of Limited or Special Common Elements may be limited as more specifically provided in this Restated Declaration.
- C. Management Company and Other Services. The Executive Board shall have the sole and complete authority to select, hire, terminate, negotiate and otherwise deal with a Management Company that will provide services to the Association and the Condominium Project, including maintenance of Units and providing short term rental agency services.

Notwithstanding the foregoing, the Executive Board may enter into agreements with Declarant, other residential homeowners associations or third parties for the purpose of sharing the use of the General and Special Common Elements for special events and the like and to allocate the costs of operating, repairing and maintaining these General and Special Common Elements.

- D. Recreational Facilities. With the exception of the WestWall Club Unit, all recreational facilities of the Association will be part of the General Common Elements, and all expenses attendant thereto shall be Common Expenses as defined in this Restated Declaration. The Executive Board may enter into agreements with the Declarant, other homeowner associations or third parties for the purpose of sharing the use and allocating the costs of operating, repairing and maintaining their respective recreational facilities.

ARTICLE VI LIMITED COMMON ELEMENTS, EASEMENTS AND LICENSES.

- A. Limited Common Elements.

(1) A portion of the General Common Elements is reserved for the exclusive use of the individual Owners of the respective Units, and such areas are referred to as Limited Common Elements and are reserved: (i) as provided in Section 38-33.3-202 of the Act; or (ii) as identified on the Map specifying to which Unit or Units each Limited Common Elements is allocated. All of the Owners of the Condominium Units in the Condominium Project shall have a non-exclusive right in common with all of the other Owners to the use of sidewalks, pathways, elevators, common stairways, lobbies, paved areas, and roads

and streets located within the entire Condominium Project, if any, unless designated on the Revised Map as a Limited or Special Common Element. No reference thereto, whether such Limited Common Elements are exclusive or non-exclusive, need be made in any deed, instrument of conveyance, or other instrument, and reference is made to the provisions of Article IV of this Restated Declaration.

(2) A portion of the front desk and the office area adjacent to the lobby of building A shall be a Limited Common Element appurtenant to the WestWall Club as depicted in the Second Supplemental Map. The remaining portion of the front desk and office area is reserved for the non-exclusive use of the Managing Agent and employees of the Management Company for the purpose of satisfying the Managing Agent's or Management Company's obligations under a management contract with the Association.

B. License or Easement. In order to implement the easements reserved by the Declarant for the purpose of operating the WestWall Club as more fully described in this Restated Declaration, the Association grants an easement to the owners of the WestWall Club unit permitting access and passage through and over portions of the General and Special Common Elements from time to time by members of the WestWall Club and their guests. The Association also grants an easement to the owners of the WestWall Club Unit for access to and use of all lobby and entrance areas for the purpose of conducting special events and social activities and to permit the operation of the WestWall Club as described in Article XXIX below. The Association may grant additional easements or licenses to the Declarant or to third parties, all upon such terms and conditions as may be determined by the Executive Board.

ARTICLE VII SEPARATE ASSESSMENT AND TAXATION NOTICE TO ASSESSOR

Each Condominium Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. The General Common Elements shall not be assessed separately but shall be assessed with the Condominium Units as provided pursuant to Colorado Revised Statutes Subsections 39-1-103(10) and 38-33.3-105(2). In the event that for a period of time any taxes or assessments are not separately assessed to each Unit Owner, but are assessed on the real property as a whole, then each Unit Owner shall pay his or her proportionate share thereof in accordance with his or her percentage Ownership in the General Common Elements.

ARTICLE VIII MEMBERSHIP AND VOTING.

A. Membership Corporation. The Association shall be a nonprofit membership corporation without certificates or shares of stock. There shall be one (1) membership in the corporation for each Owner of a Unit. No person or entity other than the Declarant or the Owner of a Unit may be a Member of the Association.



- B. Membership and Voting Rights. There shall be two classes of Association memberships. The Class A membership interests shall be composed of Owners of the residential Units. The Class B membership interest shall be composed of the Owner of the WestWall Club Unit. Owners shall be Members, including the Declarant, so long as the Declarant continues to own an interest in a Unit. There shall be one (1) equal vote for each Unit. If more than one person holds an interest in any Unit, all such persons shall be Members. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one person seeks to exercise it.

- C. Voting Issues. Any issue relating solely to or having a significant effect upon the WestWall Club shall be decided by the Class B membership interest. The Owner of the WestWall Club Unit shall be entitled to vote individually as a class on any such issue. The Class B membership interest shall also have representation at all times on the Executive Board, and the Owner of the WestWall Club Unit shall be entitled to elect one member to the Executive Board. This entitlement shall be reflected in the governing documents of the Association and may not be amended or impaired by the Association in any manner without the express written consent of the Owner of the WestWall Club Unit.

**ARTICLE IX
USE AND OCCUPANCY OF RESIDENTIAL UNITS.**

- A. Residential Use. All Units other than the WestWall Club Unit are hereby identified as residential Units. Such residential Units shall be used and occupied by the Owner, the Owner's family and the Owner's guests and tenants for residential purposes only. Any commercial use of a Residential Unit is strictly prohibited; provided, however, leasing of residential Units shall be permitted subject to this Restated Declaration and such rules affecting leases and lease terms as the Executive Board may prescribe. No Owner of any Unit shall offer, sell or lease any interest in such Units under a timesharing, interval ownership plan, non-equity membership club, floating interval rental program or any similar plan.

- B. Leases. The Executive Board may, by resolution or rule, prescribe minimum lease terms for the occupancy of residential Units. The Executive Board may require residential Units be rented on a standard Association approved lease containing addenda regarding Association covenants and rules which shall be incorporated in the Owner's lease. The Executive Board may also require that any leases be reviewed and approved by the Executive Board or the Managing Agent, and that the Association may require the payment of a fee reasonably based on the administrative expense to the Association. The Association may require that an Owner proposing to lease his or her residential Unit deliver a duplicate original or photostatic copy of the original lease to the Association prior to the date of occupancy by the lessee.

An Owner proposing to lease his or her residential Unit, or the lessee of a residential Unit, may be required to deposit with the Association a lease deposit in an amount determined by resolution of the Executive Board and which may be graduated in rates based on the length of the lease, type of occupancy, or other facts deemed appropriate in the sole discretion of the Executive Board. The lease deposit may be used as security for the payment of liquidated damages if any lessee, member of his family or other occupant violates the Association's Rules and Regulations or damages the Association's General Common Element after notice of the levy of a fine and an opportunity for a hearing. In the event the requirements of the Rules and Regulations are complied with, and no damage is incurred, the deposit shall be returned in full. Such actions may be taken in addition to, and not in lieu of, any other enforcement remedies available to the Association as set forth in this Restated Declaration, the Bylaws, or the Rules and Regulations.

- C. Compliance with Rules. Each Owner shall comply strictly with the provisions of this Restated Declaration, the Articles of Incorporation, the Bylaws of the Association, the Rules and Regulations adopted by the Association, the parking management plan, and the decisions and resolutions of the Association as the same may be amended from time to time. Failure of any Owner or occupant to comply with any of the governing documents shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs and attorneys fees incurred in connection therewith, which action shall be maintainable by the Managing Agent or the Executive Board in the name of the Association on behalf of the Owners or, in a proper case by an aggrieved Owner or the Declarant.
- D. Assignment of Parking Spaces. The Executive Board or the Managing Agent may assign parking spaces to Units in a manner consistent with the parking management plan and this Restated Declaration. Each residential Unit shall have no more than one assigned parking space. Each parking space assigned to a residential unit shall be treated as a permanent assignment, but the location of assigned parking spaces may be changed by the Managing Agent from time to time. Parking spaces which are vacant at any time or which have not been assigned shall be subject to the occupancy and easement rights of the WestWall Club as described in Article XXIX below.
- E. Special Declarant Rights. As long as Declarant or any nominee of Declarant owns any Condominium Units, Declarant, its agent and/or its nominee shall have the right and privilege to maintain general and sales offices in or about the Condominium Project including, without limitation thereto, model residences and to have the right and privilege to have their employees or agents present the Condominium Project to the public for any purpose, to show Units, to use the General Common Elements and any unsold Unit which is not under contract and, without limitation, do any and all things necessary or appropriate by them to sell Condominium Units, all without charge or contribution except as otherwise provided herein. The use by Declarant of any Unit as a model residence or office shall not affect its designation on the



Revised Map as a separate Unit. The Declarant has the right to use any part of the General Common Elements for posting of signs and advertising.

ARTICLE X RULES AND REGULATIONS.

The Association or the Executive Board may make, adopt, amend and modify from time to time, reasonable Rules and Regulations governing the use of the Units, Limited Common Elements, and the General Common Elements, which Rules and Regulations shall be substantially consistent with the right and duties established in this Restated Declaration. However, the Rules and Regulations may not discriminate in any manner against the operation of the WestWall Club or impair any rights or privileges which are held by the owner of the WestWall Club Unit. The Association, the Declarant or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such Rules and Regulations and with the provisions of this Restated Declaration, the Articles of Incorporation and Bylaws of the Association to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law. The Association shall also be entitled to recover all costs and attorney fees incurred with any enforcement action. The initial Rules and Regulations are attached hereto as Exhibit D. Each Owner and Member understands and acknowledges on behalf of themselves and their occupants, tenants, and invitees that the Executive Board may amend, add to, modify or delete the initial Rules and Regulations.

ARTICLE XI MAINTENANCE RESPONSIBILITY.

A. Owner's Responsibility.

- (l) Units. Owners shall be responsible for maintenance, repair, alteration and remodeling of his or her Unit, including, without limitation, the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile, flooring, subflooring, and any Unit doors and windows) making up the finished or underlying surfaces of the perimeter walls, ceilings and floors within the Unit. In addition, Owners shall be responsible for maintenance, repair, alteration and remodeling of any chute, flue, duct, wire, conduit, line, or systems (which for brevity are herein and hereafter referred to as "utilities") at that point where such utility starts to serve only that Unit (becoming a Limited Common Element) whether within or partially outside the designated boundary of the Unit. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Architectural Control Committee. Such right to repair, alter and remodel is coupled with the obligation to replace any finished or other materials removed with similar or other types or kinds of materials.

An Owner shall maintain and keep the interior of his or her Unit in a well-repaired, maintained, clean and sanitary condition, including the fixtures thereof All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof.

All windows in a Unit shall utilize drapes, shades or window coverings with exterior surfaces which are neutral in appearance and which are harmonious in color and style with the exterior surfaces of the building.

- (2) Limited Common Elements. An Owner shall keep any other Limited Common Element appurtenant to his or her Unit in a maintained, clean and sanitary condition; and free and clear of snow, ice, dirt, debris, and any accumulation of water, at his or her own expense. Notwithstanding anything contained in this Restated Declaration to the contrary, a residential Owner shall not alter or modify an exterior portion of the Building, regardless of whether such exterior area is a part of his or her Unit or Limited Common Element appurtenant to his or her Unit.
- (3) Reimbursement. An Owner shall be obligated to reimburse the Association promptly upon receipt of its statement of any expenditures incurred by it in repairing or replacing any portion of a Unit or Limited Common Elements for which the Owner is responsible, or for the repairs of another Owner's Unit or Limited Common Element, or any General Common Element damaged by any act or failure to act of the Unit Owner, his or her tenants, guests, employees, invitees, lessees or agents.
- (4) Association Approval. An Owner shall do no act nor any work that will or may impair the structural soundness or integrity of the building, impair any easement or hereditament, nor violate any laws, ordinances, regulations and codes of the United States of America, the State of Colorado, the County of Gunnison, or any other agency or entity which may then have jurisdiction over said Unit without the prior written consent of the Executive Board of the Association after first proving to the satisfaction of the Executive Board that compliance with this section's requirements will be maintained during and after any such act or work shall be done or performed. Any expense to the Association for investigation under this Article shall be borne by the Owner. However, nothing herein contained shall be construed to permit structural modification and any decision relating thereto shall be in the absolute discretion of the Executive Board, including, but not limited to the engaging of a structural engineer at the expense of the Owners for the purpose of obtaining further opinions and approvals.
- (5) WestWall Club Unit. An Owner shall not conduct any work or any repair or maintenance activity which could impair the WestWall Club Unit or any of its appurtenant Limited Common Elements or any structural components or



operating systems which service the WestWall Club Unit.

- B. Association's Responsibility. Any part of the Condominium Project which is not an Owner's maintenance responsibility shall be the maintenance responsibility of the Association. In addition, the Association shall have the maintenance responsibility for all of the balconies (including painting) which are Limited Common Elements and the parking spaces. However, the Executive Board shall allocate direct and indirect expenses incurred as the result of incremental use of the garage and parking spaces from the WestWall Club operations to the owner of the WestWall Club Unit in a ratio that requires seventy percent (70%) of such incremental expenses to be paid by the owner of the WestWall Club Unit. The Association shall otherwise have the duty of maintaining and repairing all of the General Common Elements and such portions of the Limited Common Elements as set forth herein within the Condominium Project and the cost of said maintenance and repair shall be a Common Expense. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; subject, however, to Articles XXI and XXII hereof.

The Association shall, on its own or through its Managing Agent, provide to the Owners the following services which shall be paid for out of the Common Expense Assessment, to wit:

- (1) maintaining the General Common Elements and specific Limited Common Elements as specified herein;
- (2) administering and managing the Condominium Project;
- (3) providing common utilities;
- (4) setting aside reserves for future maintenance, repairs and replacements;
- (5) providing site maintenance, including snow and trash removal;
- (6) obtaining the insurance required in Article XIX hereof;
- (7) acting as attorney-in-fact in the event of damage or destruction as provided for in Article XX hereof: and
- (8) performing all other acts required by this Restated Declaration, or the Articles of Incorporation, Bylaws or Rules and Regulations of the Association.

The Association may, but shall not be obligated to, maintain or support certain activities within the Condominium Project designed to make the Condominium Project safer than it otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Condominium Project, nor shall any of them be

held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Condominium Project, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Executive Board and committees, Declarant, and any successor Declarant are not insurers and that each person using the Condominium Project assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

The Association reserves the right to hire one or more persons or entities including a Managing Agent, rental management company, contractors, and employees to perform such services, provided, however, that any such hiring shall be subject to the provisions set forth herein.

C. Architectural Standards.

- (1) Architectural Standards. Except as provided herein or permitted by the Act, no Owner, tenant, occupant, or any other person may make any improvement to, or encroachment onto the Common Elements or Limited Common Elements, or make any exterior modification, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, clothesline, playground equipment, storm door or window, door knob or knocker, artificial vegetation, exterior sculpture, fountains, flags, or thing on the exterior of the Building, in any windows, or any Limited Common Elements, or any other Common Elements, without first obtaining the prior written approval of the Architectural Control Committee ("ACC"). The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the Building, Units and structures, and the location in relation to surrounding structures and topography.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Executive Board or the ACC may publish written architectural standards for exterior alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the Building and Units and the location in



relation to surrounding structures and topography of the vicinity.

In the event that the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subparagraph (a) will be deemed complied with; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Restated Declaration, the By-Laws, or the Rules and Regulations.

- (2) Architectural Control Committee. The ACC shall constitute a standing committee of the Association. For so long as the Declarant owns any Unit within the Condominium Project, Declarant shall have the right to appoint and remove all members of the ACC. Thereafter, the ACC shall consist of the Executive Board unless the Executive Board delegates to other Unit Owners the authority to serve on the ACC. The Executive Board may delegate such authority to individual Unit Owners by resolution, or the Executive Board may call for a special election by the Association to select the Unit Owners to whom the authority shall be delegated. At all times after the Declarant's right to appoint the ACC has expired, the chairperson of the ACC shall be a member of the Executive Board.
- (3) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration. In the discretion of the Executive Board or the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.
- (4) Limitation of Liability. Review and approval of any application pursuant to this paragraph is made on the basis of aesthetic considerations only and neither the Executive Board nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications. In addition, the Executive Board and the ACC shall bear no responsibility for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Executive Board, the ACC, nor any member of any of the foregoing, shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit, and all liability and risk shall be exclusively undertaken by the Owner.
- (5) No Waiver of Future Approvals. Each Owner acknowledges that the



members of the Executive Board and the ACC will change from time to time, and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Executive Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Executive Board or the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

- (6) Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, the Executive Board, or the ACC, Owners shall, at their own cost and expense remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Declarant, or the Executive Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be specifically assessed against the Unit and collected as an assessment pursuant to this Restated Declaration.

In addition to the foregoing, the Executive Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC.

If any Owner or occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Elements in violation of this Section, he or she does so at his or her sole risk and expense. The Executive Board may cause such improvements to be removed at the expense of the owner or may require that the change, alteration or construction remain on the Common Elements without reimbursement to the Owner or occupant for any expense he or she may have incurred in making the change, alteration or construction.

ARTICLE XII RESERVATION FOR ACCESS, MAINTENANCE, REPAIR AND EMERGENCIES.

The Association shall have the irrevocable right, to be exercised by the Managing Agent or Executive Board of the Association, to have access to each Unit from time to time during reasonable hours under the particular circumstances as may be necessary for the maintenance, repair or replacement of any of the General Common Elements or Limited



Common Elements therein or accessible therefrom or for making repairs therein necessary to prevent damage to the General Common Elements, Limited Common Elements, or to another Unit or Units. In the event a Unit Owner causes damage to the General Common Elements or to any Limited Common Elements or to the interior or any part of a Unit or Units resulting from the misuse or negligence of such Unit Owner, his or her tenants, guests or invitees, then such Unit Owner shall be solely responsible for all expenses to restore his or her Unit and/or any other affected Units and/or affected General Common Elements or Limited Common Elements to their condition prior to such damage.

The Association may retain a passkey to each Condominium Unit. No Unit Owner shall alter any lock or install a new lock on any door of the Building without the written consent of the Executive Board. In the event such consent is given, the Unit Owner shall provide the Association with a duplicate key. Failure to comply with this requirement could result in forced entry by the Executive Board or Managing Agent at the Owner's expense. Further, each Owner hereby specifically authorizes the Managing Agent or Executive Board to remove or re-key any lock installed in contravention of this provision at the Owner's expense, and in addition to assess a penalty against Owner of \$100.00 per month for each month that the Owner refuses to comply with this Article XII of the Restated Declaration.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the General Common Elements, Limited Common Elements, or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the General Common Elements. The Association shall not be liable to any Owner, or any Owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Restated Declaration where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Restated Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association.



**ARTICLE XIII
EASEMENTS.**

- A. Easement for Encroachment. If any portion of the General or Limited Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the General or Limited Common Elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event that any one or more of the Units or Buildings or other improvements comprising part of the General or limited Common Elements are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General or Limited Common Elements or on the Units.
- B. Easement for Construction Facilities. Until the conveyance by Declarant of the last Condominium Unit within this Condominium Project, or September 1, 2020, whichever is sooner, Declarant reserves unto itself an easement on, over and across the General Common Elements for the purposes of storing and operating construction trailers, construction yards, and construction materials, and equipment used in conjunction with the development and construction of the Condominium Project.
- C. Easement for Utilities. Until the conveyance by Declarant of the last Condominium Unit within this Condominium Project, or September 1, 2020, whichever is sooner, Declarant reserves unto itself an easement on, over or across the General Common Elements to any utility company and or governmental authority or agency providing utility services, including, but not limited to, water, sewer, storm sewer, gas, electric, telephone, and cable television, to the Condominium Project or to other parcels of real property adjoining the Condominium Project whether or not such parcels or real property are owned by Declarant or third parties. The right of Declarant to grant easements as hereinabove reserved shall permit Declarant to grant such easements and permit the holder of such easements to install, replace, repair, maintain and operate its utility lines and/or facilities over and across that portion of the project described in such easement.
- D. Easement for WestWall Club Activities. Declarant reserves an easement in perpetuity over the General Common Elements for all purposes connected with the activities of the WestWall Club. This shall include, without limitation, the operation of and access to the WestWall Club facilities, the use of unassigned and vacant parking spaces for members of the WestWall Club and all activities within the WestWall Club facilities and upon the General Common Elements. The Association may not issue any rules or take any action which impairs or adversely affects the rights and privileges of the Owner of the WestWall Club Unit or the conduct of any

activities of the WestWall Club.

- E. Other Easements. Declarant hereby declares that the Condominium Project is now, or may hereafter become, subject to, those certain easements, licenses and/or recorded documents as set forth in Exhibit C attached hereto and incorporated herein by this reference.

ARTICLE XIV TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION.

Subsequent to the completion of the improvements described on the Revised Map, no labor performed or materials furnished or incorporated in a Unit with the consent or at the request of a Unit Owner or his or her agent or his or her contractor or subcontractor shall be the basis for filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against the General Common Elements. Each Owner shall indemnify and hold harmless the Association and each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the General Common Elements for construction performed or for labor, materials, services or other products incorporated into the Condominium Project at the direction of said Owner. Notwithstanding the foregoing, any mortgagee of a Condominium Unit who shall become an Owner of a Condominium Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless the Association or any other Owner against liability for claims arising prior to the date such mortgagee becomes an Owner.

ARTICLE XV ADMINISTRATION AND MANAGEMENT.

- A. Management. The administration and management of this Condominium Project shall be governed by this Restated Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations of the Association. An Owner of a Condominium Unit, upon becoming an Owner, shall be a Member of the Association and shall remain a Member for the period of his or her Ownership. The Association shall be initially governed by an Executive Board as is provided in the Bylaws. The Association may delegate by written agreement any of its duties, powers and functions related to the day-to-day administration and/or management of the Association, to any person or firm to act as Managing Agent at an agreed compensation; provided that any agreement for professional management of the Condominium Project or other contract providing for services by the Declarant under a contract with the Association shall provide that the same may be terminated by either party to said contract, with or without cause, upon ninety (90) days written notice, and that said contract shall not be for an original term in excess of five (5) years. The Association, if requested, shall notify each first mortgagee of any Condominium Unit of any proposed change in the Association's Managing Agent at least ten (10) days prior to the effective date of such change.



- B. Certificate of Identity. There may be recorded from time to time a certificate of identity which shall include the addresses of the persons then comprising the officers of the Association and the Executive Board members as well as the name and address of the Managing Agent. Such certificate shall be conclusive evidence of the information contained herein in favor of any person relying thereon in good faith regardless of the time elapsed since the date thereof.
- C. Annual Disclosures. The Managing Agent shall take appropriate steps to implement and maintain compliance by the Association with the annual disclosure requirements of the Act. The Executive Board shall provide oversight and review of this process to assure that all required disclosures under the Act are carried out in an efficient and practical manner.
- D. Policy Governance Statements. The Executive Board shall adopt such written policy governance statements from time to time as may be required by the Act. Copies of each policy governance statement shall be made available to all Members.

ARTICLE XVI ASSESSMENTS.

- A. Covenant of Personal Obligation of Assessments.
- (1) From and after the date of the first conveyance of a residential Unit to an Owner other than Declarant, all Owners of Units shall be obligated to pay the estimated Common Expenses (hereinafter sometimes referred to as Common Expense Assessments or "Assessments") imposed by the Executive Board of the Association to meet the cost of Common Expenses and reserves which are determined by the Executive Board to be necessary or appropriate. The share of these expenses to be allocated to each Unit shall be equal to each Units percentage interest in the General Common Elements based on the proportional or relative size of each Unit. With respect to residential Units owned by Declarant and submitted to this Restated Declaration, Declarant shall be obligated to pay the estimated Common Expense Assessments imposed by the Executive Board for required Common Expenses and reserves.
 - (2) The Owner of the WestWall Club Unit shall be required to pay Assessments in the same manner as residential Unit Owners, except that such assessments, because of the different burdens which the WestWall Club Unit places upon the project, shall be levied upon the WestWall Club Unit in the amount of only 65 percent of the proportional assessment amount for each Residential Unit based on relative size.
 - (3) In the event that the Association is required to perform any maintenance or



repair of an appurtenant Limited Common Element which is the maintenance responsibility of such Owner, the Owner shall be liable to reimburse the Association as a specific assessment as provided herein.

- (4) Assessments for the estimated Common Expenses for residential Units shall be due in advance on the first day of each calendar quarter. If any such quarterly installment shall not be paid within thirty (30) days after it shall become due, the Association's Executive Board may assess a "late charge" as reasonably determined from time to time by the Executive Board, interest on the unpaid principal at a rate not to exceed 21% per annum, costs, and attorney's fees as hereinafter provided. Each Owner hereby agrees that the Association's lien on a Condominium Unit for Assessments as hereinafter described shall be superior to the Homestead Exemption provided by C.R.S. Section 38-41-201, and other similar state and federal laws and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Condominium Unit within this Project shall signify such grantee's waiver of the exemption right granted by the Colorado statutes and similar federal laws.

- B. Proration of Common Expense Assessments. In the event the Ownership of a Condominium Unit, title to which is derived from Declarant, commences on a day other than the first day of the assessment period, the Common Expense Assessments for that period will be prorated.
- C. Common Expense Assessments. Common Expense Assessments shall be based upon a budget of Common Expenses established by the Executive Board in accordance with Subsection D below for the payment of all estimated expenses relating to or connection with the administration, maintenance, ownership, repair, operation, addition, alteration and improvements of the General Common Elements of the Condominium Project and personal property owned by the Association, and for the payment of all expenses connected with any other functions and responsibilities of the Association. Said sum may include, but shall not be limited to, expenses of management; the incremental expense of the garage parking operations for the WestWall Club such as cleaning, painting and garage door maintenance (such incremental expenses to be paid 30 percent by the Association and 70 percent by the Owner of the WestWall Club Unit); taxes and special assessments until separately assessed; premiums for insurance; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash collection, wages; common fees; expenses and liabilities incurred by the Association's Executive Board on behalf of the Owners under or by reason of this Restated Declaration and the Articles of Incorporation and Bylaws of the Association; for the creation of reasonable contingency reserves, working capital and/or sinking funds; and any and all other costs and expenses relating to the General Common Elements or the Condominium Project. Common Expense Assessments shall be levied against the WestWall Club Unit under all circumstances in the amount of 65 percent of the proportionate assessment for



each Unit.

D. Budget.

- (1) At least 60 days before the beginning of each fiscal year, the Executive Board shall prepare a budget of the estimated Common Expenses for the coming year. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units.
- (2) Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budgets to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of the Members reject the budget of General Common Expenses, the General Common Expense budget is ratified, whether or not a quorum is present. Unless at that meeting a majority of Members in the Association reject the budget of Limited Common Expenses, the Limited Common Expense budget is ratified, whether or not a quorum is present. In the event that a proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually.

E. Utility Charges. Each Owner shall be obligated to pay all charges for any separately metered utilities, servicing his or her Condominium Unit. In the event that any utilities, such as water and sewer, are master metered, then such utility service shall be part of the General Common Expenses hereinbefore provided.

F. Obligation to Pay Assessments. The omission or failure to fix the Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the Owners from their obligations to pay same.

G. Reserve Fund. Subject to Subsection D above, the Association shall be obligated to establish a reserve fund for the maintenance, repair and replacement of those General Common Elements that must be replaced periodically and such reserve fund shall be funded through the quarterly payments of the General Common Expense Assessments, such reserve funds shall be held by the Association and accounted for separately.

H. Special Assessments. In addition to the Assessments authorized above, and unless prohibited by the Act, the Association, through its Executive Board, may from time to time, determine, levy and assess a special assessment in any assessment year,

which determination, levy and assessment may be made by the Association's Executive Board with or without vote of the Members of the Association. Any special assessment shall be for the purpose of defraying, in whole or in part, the unbudgeted costs or payments for any deficit remaining from a previous period, for fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the General Common Elements, the Condominium Project, or any facilities located thereon, specifically including any fixtures and personal property related thereto. In the event any special assessment will exceed Ten Thousand (\$10,000.00) Dollars per Condominium Unit for all Condominium Units applicable to that particular assessment year, then said assessment, if proposed by the Executive Board, shall be subject to a majority vote of the Members. The limitations set forth herein shall not apply to any emergency repair or maintenance. The amounts determined, levied and assessed pursuant hereto shall be assessed to each Owner in accordance with his or her undivided interest in the General Common Elements; and shall be due and payable as set forth in any notice of special assessment promulgated by the Association Executive Board.

I. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

- (1) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Executive Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, Unit maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner: and
- (2) to cover costs incurred in bringing the Unit into compliance with the terms of this Restated Declaration, the Bylaws or the Rules and Regulations, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees or guests; provided, the Executive Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection I.

J. Liability for Assessments. All Owners of a particular Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments attributable to such Condominium Unit, including the annual assessment for Common Expenses and special assessments assessed against their particular Condominium Unit; and any such assessments shall be a personal and individual debt of the Owner thereof. No Owner may exempt himself herself from liability for the assessment by abandonment of his or her Condominium Unit or by waiver of the use or enjoyment of all or any part of the General Common Elements. Suit to recover a money judgment for unpaid assessments, any penalties and interest



thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith shall be maintainable without foreclosing or waiving the assessment lien provided in this Restated Declaration.

K. Lien for Assessments.

(1) All sums assessed but unpaid for the share of Common Expenses, whether general, special or specific, chargeable to any Condominium Unit, shall constitute a lien on such Condominium Unit superior to all other liens and encumbrances, except only for:

- (a) Real estate taxes and special assessment liens on the Condominium Unit in favor of any public or quasi-public assessing entity;
- (b) Liens and encumbrances recorded before the recordation of this Restated Declaration; and
- (c) All sums unpaid on a first mortgage or first lien priority deed of trust of record, including advances and all unpaid obligatory sums as may be provided by such encumbrances.

To evidence such lien, the Executive Board may, but shall not be obligated to, prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Any such notice shall be signed by a representative of the Managing Agent, one of the members of the Executive Board, or by one of the officers of the Association and may be recorded in the office of the Clerk and Recorder of the County of Gunnison, Colorado. The recording of any written notice of lien shall not constitute a condition precedent nor delay the attachment of the lien, but such lien is a perpetual lien upon the Condominium Unit and attaches without notice at the beginning of the first day of any period for which any assessment is levied or assessed. Such lien may be enforced by the judicial foreclosure of the defaulting Owner's Condominium Unit by the Association as well as in an action at law against the Owner personally obligated to pay the same or both.

(2) An Owner shall be required to pay the costs, expenses and attorney fees incurred by the Association in regard to any such default, including the cost of preparation and filing the lien, and, in the event of foreclosure proceedings, all additional costs, expenses and attorneys' fees incurred. An Owner of the Condominium Unit being foreclosed shall be required to pay to the Association the monthly Common Expense Assessments for the Condominium Unit during the period of foreclosure, and the Association shall



be entitled to request a receiver to collect the same. The Association shall have the power and authority to bid for the Condominium Unit at a foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same during such proceeding and its Ownership thereof.

- (3) Any mortgagee holding a lien on a Condominium Unit may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Condominium Unit, and upon such payment, such mortgagee shall have a lien on such Condominium Unit for the amounts paid on the same rank as the lien of his or her encumbrance without the necessity of having to record a notice or claim of such lien. The Association shall report to the first mortgagee of a Condominium Unit, upon written request, any unpaid Common Expense Assessments remaining unpaid for longer than thirty (30) days after the same is due or other default of any covenant, condition, obligation, or term of this Restated Declaration not cured within thirty (30) days; provided, however, that such mortgagee shall have furnished to the Association notice of such encumbrance.
- (4) Any recorded lien for nonpayment of the Common Expenses may be released by recording a release of lien executed by an officer or Managing Agent of the Association. The cost of preparing, filing and recording any release shall be paid by the affected Unit Owner to the Association in advance of obtaining the release.
- (5) Notwithstanding the terms and conditions of this Restated Declaration, in the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this Restated Declaration relating to the liability of a grantee for the unpaid Common Expense Assessments of his or her grantor, but only to the extent permitted under the Act. Further, no first mortgagee shall be liable for any unpaid Common Expense Assessments accruing prior to the time such mortgagee becomes the Owner of any Condominium Unit pursuant to the remedies in its mortgage, but only to the extent permitted under the Act. A lien of the Association, when delinquent, may be enforced in the same manner as provided for the judicial foreclosure of mortgages under the laws of the State of Colorado. Notwithstanding the foregoing, the Association's lien for delinquent assessments shall be prior to a first mortgage of record to the extent of an amount equal to the Common Expenses based on the Association's annual budget which would have come due in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien.

L. Working Capital Fund Contributions. In order to provide the Association with

adequate working capital funds, the initial purchaser of a Unit shall make a one-time nonrefundable payment to the Association of \$500 upon the purchase of his or her Unit. This payment to the Association for working capital funds shall be in addition to any quarterly installments of the annual Common Expense Assessments which may be due at the time of such purchase.

**ARTICLE XVII
LIABILITY FOR COMMON EXPENSE
UPON THE TRANSFER OF CONDOMINIUM UNIT.**

Upon the written request of any Owner or any mortgagee, or prospective mortgagee or grantee of a Condominium Unit the Association, by its Managing Agent, or if there is no Managing Agent, then by the financial officer of the Association, shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Condominium Unit, the amount of the current monthly Assessment and the date that such Assessment becomes due, credit for any advanced payments of Assessments, but not including accumulated amounts for reserves or sinking funds, if any, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party within fourteen (14) business days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest in the Condominium Unit subsequent to requesting such statement. The grantee of a Condominium Unit, except for any first mortgagee who comes into possession of a Condominium Unit pursuant to foreclosure of its mortgage or by the taking of a deed in lieu thereof to the extent permitted under the Act, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

**ARTICLE XVIII
MORTGAGING A CONDOMINIUM UNIT - PRIORITY.**

An Owner shall have the right from time to time to mortgage or encumber his or her interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first lien priority under applicable law. The Owner of a Condominium Unit may create junior mortgages, liens or encumbrances on the following conditions:

- A. That any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligation liens for Common Expenses and other obligations created by this Restated Declaration, the Articles of Incorporation and the Bylaws for the Association.
- B. That the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his or her



right, title and interest in and to the proceeds under all insurance policies upon said premises maintained by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request from one or more of the members of the Executive Board of the Association.

ARTICLE XIX INSURANCE AND FIDELITY BONDS.

- A. General Insurance Provisions. The Association shall maintain, to the extent reasonably available:
- (1) Property insurance on the General and Limited Common Elements for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and
 - (2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the General and Limited Common Elements and the Association, in an amount, if any, deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the General and Limited Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.
 - (3) The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Condominium Units that the Association is not obligated to insure to protect the Association or the Owners. In addition, the Association may require the Owner of the WestWall Club Unit to obtain and keep in force liability and other insurance coverage as the Executive Board may reasonably deem appropriate.
- B. Cancellation. If the insurance described in Subsection A above is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

- C. Policy Provisions. Insurance policies carried pursuant to Subsection A above must provide that:
- (1) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the General Common Elements or membership in the Association;
 - (2) The insurer waives its rights to subrogation under the policy against any Owner or member of his or her household;
 - (3) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
 - (4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- D. Insurance Proceeds. Any loss covered by the property insurance policy described in Subsection A above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and mortgagees holding a first security interest in a Condominium Units as their interests may appear. Subject to the provisions of Subsection G below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and first mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Restated Declaration is terminated.
- E. Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to the Property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration an amount equal to all or any equitable portion of the deductibles paid by the Association.
- F. Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Subsection A above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and mortgagee to whom a

certificate or memorandum of insurance has been issued at their respective last-known addresses.

G. Repair and Replacement.

- (1) Any portion of the General Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:
 - (i) The Condominium Project and the condominium regime created thereunder by this Restated Declaration is terminated;
 - (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
 - (iii) Sixty-seven percent of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or
 - (iv) Prior to the conveyance of any Condominium Unit to a person other than Declarant, the mortgagee holding a deed of trust or mortgage on the damaged portion of the General Common Elements rightfully demands all or a substantial part of the insurance proceeds.
- (2) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominium Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or mortgagees, as their interests may appear in proportion to their respective ownership interests in the Common Elements.

H. Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are General Common Expenses.

I. Fidelity Insurance. Fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than (1) \$50,000, or (2) two months' current Assessments plus reserves as calculated from the current budget of the Association, whichever is greater. In addition, if responsibility for handling funds is delegated to the Managing Agent, such bond may be obtained for the Managing Agent and its officers, employees and agents, as applicable, any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the insurers of all defenses based upon the

exclusion of persons serving without compensation from the definition of "employees," or similar terms of expressions.

- J. Workmen's Compensation Insurance. The Executive Board shall obtain workmen's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.
- K. Directors' and Officers' Liability Insurance. The Executive Board shall obtain a policy of directors' and officers' liability insurance which shall provide protection to officers of the Association and members of the Executive Board in the performance of their duties and obligations on behalf of the Association. The terms of the policy shall be determined by the Executive Board with the advice of the Association's counsel.
- L. Other Insurance. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties as required by the Act and other applicable laws.
- M. Insurance Obtained by Owners. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation; and provided further that the liability of the carriers issuing insurance obtained by the Executive Board shall not be affected or diminished by reason of any such additional insurance carried by any Owner. All Owners are required to file copies of any such policies with the Association. Insurance coverage on furnishings, draperies, wallpaper and other items of personal or other property, improvements or betterments belonging to an Owner and public liability coverage within each Unit shall be the sole and direct responsibility of the Owners thereof, and the Executive Board, the Association and the Managing Agent shall have no responsibility therefore. In addition, liability insurance shall be maintained by the Owner of the WestWall Club Unit in coverage amounts which the Executive Board reasonably deems to be necessary.
- N. Mortgagee Protection. In the event that there shall be any damage or destruction to, or loss of, or taking of a Unit which exceeds Fifty Thousand (\$50,000.00) Dollars or any damage or destruction to, or loss of, or taking of the General Common Elements which exceeds One Hundred Thousand (\$100,000.00) Dollars, then notice of such damage or loss or taking shall be given by the Association to each first mortgagee of said Condominium Units within ten (10) days after the occurrence of such event and the cost of repair determined.

The Executive Board of the Association shall not obtain any insurance policy where:

1. under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagee or mortgagee's designee; or

2. by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the company's board of directors, policyholders or members;
3. the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds.

ARTICLE XX ATTORNEY-IN-FACT.

- A. Appointment. This Restated Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property upon its damage, destruction or obsolescence.
- B. Insurance Proceeds. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant, or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the real property upon its damage, destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary, shall have complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Condominium Units Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the General, Special and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the Owners and the first mortgagees agree not to rebuild in accordance with the provisions set forth hereunder.
 - (i) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to cause the repair and restoration of the improvements.
 - (ii) If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment, if permitted under the

Act, to be made against all of the Owners and their Condominium Units.

Any such deficiency assessment shall be a Common Expense and made pro rata according to each Owner's percentage interest in the General Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his or her Condominium Unit and may be enforced and collected as provided in Article XVI. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment, within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be required to pay the Association the costs and expenses for filing the notices, interest on the amount of the assessment at the rate of eighteen percent (18%), and all reasonable attorneys' fees and costs incident to a sale. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact in the manner required by the Act.

Notwithstanding the provisions of this Article hereinabove, if the minimum number of affected Owners as required by the Act agree in writing not to repair and reconstruct improvements within the General Common Elements and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the General Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Notwithstanding the provisions of this Article hereinabove, if all of the Owners agree not to repair or reconstruct the improvements and to terminate the Condominium Project; then in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary' or Assistant Secretary, the entire Condominium Project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in the Restated Declaration, the Revised Map, Articles of Incorporation and Bylaws. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association; and such proceeds shall be divided by the Association according to each Owner's interest in the General Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each of such accounts, without contribution from

one account to another, toward the partial or full payment of the lien of any first mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each Condominium Unit Owner's interest in the General Common Elements. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact for the same purposes and in the same order as is provided in (B)(1) through (B)(5) of this Article.

- C. Obsolescence. The Owners may agree that the General Common Elements are obsolete and adopt a plan for the renewal and reconstruction. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners of Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that such Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have thirty (30) days (thereafter) within which to cancel such plan. If such plan is not cancelled, the Condominium Unit of the requesting Owner shall be purchased according to the following procedures: If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated, one shall be drawn by lot by the Owner in the presence of the other appraisers, and the person whose name was so drawn shall be the umpire. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse the proceeds for the same purposes and in the same order as is provided in Section B(1) through B(5) of this Article, except as modified herein.

The Owners may agree that the Condominium Units are obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire premises shall be sold by the Association, as Attorney-in-fact for all of the Owners, free and



clear of the provisions contained in this Restated Declaration, the Revised Map and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one (1) Condominium Unit and each such account shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as Attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Section B(1) through B(5) of this Article.

ARTICLE XXI CONDEMNATION.

- A. Consequences of Condemnation. If at any time or times during the continuance of the Condominium Project pursuant to this Restated Declaration, all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu thereof or in avoidance thereof, then all compensation, damages, or other proceeds therefrom, the sum of which is hereinafter referred to as the "Condemnation Award." shall be payable to the Association, and the provisions of this Article shall apply.
- B. Complete Taking. In the event that the entire Condominium Project is taken or condemned or sold or otherwise disposed of in lieu hereof or in avoidance thereof, the condominium Ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the basis of each Owner's undivided interest in the General Common Elements; provided, however, that if a standard different from the value of the Condominium Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall, as soon as practical, determine the share of the Condemnation Award to which each Owner is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practical for the same

purposes and in the same order as is provided in Section B(1) through B(5) of Article XXI.

- C. Partial Taking. In the event that less than the entire Condominium Project is taken or condemned or sold or otherwise disposed of in lieu thereof or in avoidance thereof, the condominium Ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined under the following provisions. As soon as is practical, the Association shall reasonably and in good faith allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, unless otherwise required under the Act, as follows:



- (1) The total amount allocated to taking of or injury to the General Common Elements shall be apportioned among Owners on the basis of each Owner's undivided interest in the General Common Elements;
 - (2) The total amount allocated to severance damages shall be apportioned to the Owners of those Condominium Units which were not taken or condemned;
 - (3) The respective amounts allocated to the taking of or injury to a particular Condominium Unit or to improvements an Owner has made within his or her own Condominium Unit shall be apportioned to the Owner of that particular Condominium Unit involved; and
 - (4) The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective first mortgagees.
- D. Reorganization. In the event a partial taking results in the taking of a Unit, the Owner thereof shall automatically cease to be a member of the Association, and his or her Ownership interest in the General Common Elements shall terminate and vest in the Owners of the remaining Condominium Units. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratios determined in accordance with this Restated Declaration according to the same principles employed in this Restated Declaration at its inception, and shall submit such reallocation to the Owners of the remaining Units for the amendment of this Restated Declaration.
- E. Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall have priority and shall be governed by the procedures contained in Article XXI hereof.
- F. Notice of Condemnation of first Mortgagees. In the event that any portion of the Condominium Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and first mortgagee.
- G. Conflict With Act. In the event any conflict shall arise between the provisions of this Article XXII and the Act, the Act shall govern.

**ARTICLE XXII
PERSONAL PROPERTY FOR COMMON USE.**

The Association, as Attorney-in-fact for all of the Owners, may acquire and hold for the use and benefit of the Unit Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the Condominium Unit Owners in the same proportion as their respective interests in the General Common Elements, and such interest therein shall not be transferable except with a transfer of a Condominium Unit. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser of the beneficial interest in such personal property associated with the foreclosed Condominium Unit.

**ARTICLE XXIII
ANNEXATION OF ADDITIONAL PROPERTY.**

- A. Submission of Additional Improvements. Declarant may from time to time exercise the development rights reserved in this Restated Declaration to dedicate and make subject to the provisions of this Restated Declaration additional improvements containing Units or other facilities. In such case, Declarant shall file an Amended and Restated Declaration and Revised Map in accordance with the requirements of the Act. Buildings A, B and C and the Property as described on Exhibit "A" shall be the only property subject to the Declaration and this Restated Declaration. An Amended and Restated Declaration filed pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.
- B. Allocation of Interests. Each additional Unit which is added to the Condominium Project shall be allocated one vote. Allocation of liability for Common Expenses for additional Units submitted to this Restated Declaration shall be based on the percentage of undivided interests in the General Common Elements of the Association in proportion to the square footage of all Units within the Condominium Project. Upon the submission of additional Units to the Restated Declaration, a supplement to this Restated Declaration shall be recorded to set forth the allocation of interests for all Units by exhibit.

**ARTICLE XXIV
DURATION AND AMENDMENT.**

This Restated Declaration shall run with and bind the real property and shall inure to the benefit of and be enforceable by the Declarant, the Association, or any Owner of any Unit subject to this Restated Declaration, their respective legal representatives, heirs,

successors and assigns, for a term of twenty (20) years from the date this Restated Declaration is recorded, after which time this Restated Declaration shall be automatically extended for successive periods of ten (10) years unless terminated or revoked as hereinafter provided. The separate condominium estates created by the Restated Declaration and the Revised Map shall continue until this Restated Declaration is revoked or terminated.

This Restated Declaration may be amended at any time by the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Members or such other requirement as may be established. Any amendment to create or increase special Declarant rights, increase the number of Units, or change the boundaries or the allocated interests of a Unit shall require the affirmative vote or written consent of not less than sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment shall be voted on and amendments shall be proposed by the Executive Board or petitions signed by at least fifty-one percent (51%) of the voting strength of the members.

Notwithstanding anything contained in this Article the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required to be taken under that clause or the Act for such action.

ARTICLE XXV RESORT ACTIVITIES.

Resort Activities. Each Owner is hereby advised of the following matters affecting the real property and the Owner's use and enjoyment thereof:

- A. The real property is located adjacent to a public skiing facility and recreation area ("Ski Facility"), which area may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof. Such activities generally associated with the Ski Facility include, without limitation:
 - (1) vehicular and residential traffic including, without limitation: (a) buses which transport skiers and others around the Town of Mt. Crested Butte (the "Town") and between the base of the Ski Facility and the parking lots located adjacent to the Town; (b) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests of the Town and employees and agents of the ski facility operator over, around, and through the Ski Facility and the Town; and (c) construction vehicles and equipment;
 - (2) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Facility, including, without limitation: (a) tree cutting and clearing, grading and earth moving, and other construction activities; (b) construction, operation and maintenance



of access roads, snow-making equipment and chair lifts, gondolas and other skier transportation systems; and (c) operation of snow grooming vehicles and equipment and safety and supervision vehicles; and,

- (3) activities relating to the use of the Ski Facility, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities.

- B. Substantial construction-related activities relating to the development of the real property or other development within or near the Town may cause considerable noise, dust and other inconveniences to the Owners.

Each Owner by accepting a deed to a Unit, acknowledges that the impacts, disturbances and activities outlined above may occur in and around the real property and each Owner, by accepting a deed to a Unit, hereby forever waives and releases any claims which said Owner may have against the Declarant and the operator of the Ski Facility, and their respective successors and assigns, as a result of arising out of or in any way relating to the impacts, disturbances and activities outlined above.

ARTICLE XXVI REGISTRATION OF MAILING ADDRESS.

Each Owner shall register his or her mailing address with the Association, and all notices or demands, except routine statements and notices, intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address, any such notice shall be deemed given when so mailed. All notices, demands or other notices intended to be served upon the Executive Board of the Association shall be sent certified mail, postage prepaid as follows:

WestWall Lodge at Mt. Crested Butte Condominium Association, Inc.
P.O. Box 3465
Avon, CO 81620

All physical deliveries for the Association shall be delivered as follows:

WestWall Lodge at Mt. Crested Butte Condominium Association, Inc.
15 Benchmark Road, Suite 204
Avon, Co 81620

Any change in the Association's address shall be duly recorded in the Office of the Clerk and Recorder, County of Gunnison, Colorado.

As long as the Declarant owns any Unit within the Building, the Declarant shall be copied on all notices to the Association at the following address:

WestWall Partners, LLC
P.O. Box 3465
Avon, CO 81620

**ARTICLE XXVII
RESERVATION OF DEVELOPMENT RIGHTS
AND SPECIAL DECLARANT RIGHTS.**

- A. Development Rights. The Declarant hereby reserves in this Restated Declaration the following development rights: to construct and/or establish additional improvements in the subterranean space at the end of Building C to be designated on the Second Supplemental Map as reserved development space and to create an additional Commercial Unit or a Limited Common Element which will be appurtenant to the WestWall Club Unit. This development right must be exercised within ten years of the date of recording this Restated Declaration. The Declarant, in this Restated Declaration, has also established the right to construct the WestWall Club facilities in the space designated on the Second Supplemental Map as the WestWall Club. The Declarant also reserves development rights as follows: (a) to construct additional improvements within the existing buildings and to create recreational or other facilities, General Common Elements or Limited Common Elements; and (b) to subdivide Units or convert Units into General Common Elements or Limited Common Elements.
- B. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights for so long as Declarant owns any Unit within the Condominium Project for development and sale in the ordinary course of business, which may be exercised, where applicable, anywhere within the Properties:
- (1) To complete any improvements indicated on maps, plats, or development plans filed with the Restated Declaration.
 - (2) To construct and complete an outdoor swimming pool and patio area upon the General Common Elements.
 - (3) To exercise any Development Right reserved in Section A above.
 - (4) To maintain sales offices, management offices, signs, and other advertising media on the Condominium Project.
 - (5) For so long as the WestWall Club is operating, to use easements through the Common Area for the purpose of making improvements to the Condominium Project.
 - (6) To construct improvements in the Condominium Project for facilities utilized

in connection with the WestWall Club and to utilize parking spaces in accordance with the purpose described in Article XXIX below.

- (7) To appoint and remove any director or officer of the Association as provided in the Bylaws, subject to the limitations imposed by the Act.

The Declarant may assign any Special Declarant Rights, Development Rights, or other special rights and obligations of the Declarant set forth in this Restated Declaration or the Bylaws to any affiliate of the Declarant or a builder, or Declarant may allow any affiliate of the Declarant or a builder to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.

Any or all of the Special Declarant Rights identified in this Section, Development Rights, or any of the other special rights and obligations of the Declarant set forth in this Restated Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Restated Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

ARTICLE XXVIII REAL AND PERSONAL PROPERTY FOR COMMON USE.

The Association, through action of its Executive Board, may acquire and hold tangible and intangible personal property and real property. The Association, through action of its Executive Board, may dispose of tangible and intangible personal property, and real property, subject to the limitations of the Act. The Declarant and its designees, subject to the limitations of the Act, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the Condominium Project, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

The Association, through action of its Executive Board, may mortgage or encumber real property of the Association, subject to the limitations of the Act. In addition, the Executive Board specifically shall have the right to assign its future income including the right to receive Common Expense Assessments, for the obligations of the Association.

ARTICLE XXIX WESTWALL CLUB

- A. Cooperation with Association. The operation of the WestWall Club requires the use

of the General Common Elements by members of the WestWall Club and their guests. The Association shall cooperate with the WestWall Club Unit Owner in order to assure that all General Common Elements are managed and maintained in a manner which is conducive to a high level of enjoyment of the WestWall Club by its members and guests and by the Owners and their guests.

B. WestWall Club Membership. The WestWall Club is a private membership club located within the Condominium Project. The WestWall Club will be located in the WestWall Club Unit as depicted on the Map and will contain a health club facility with exercise equipment and locker rooms. All Owners and their guests shall be entitled to utilize the exercise and recreational facilities of the WestWall Club without charge and without having to become members. Such use shall not confer any additional parking privileges or rights. In addition, Owners and their guests must pay for goods and services offered by the WestWall Club. Membership in the WestWall Club is limited to non-Owners and will be subject to the terms and conditions of the WestWall Club Membership Plan, the Rules and Regulations and the Membership Agreements, as the same may be amended from time to time (the "Membership Plan Documents").

C. Membership Charges. Membership in the WestWall Club requires the payment of membership dues, fees and other amounts (the "WestWall Club Charges") as set forth in the Membership Plan Documents. WestWall Club Charges shall be determined by the WestWall Club and are subject to change as contemplated by the Membership Plan Documents.

D. The WestWall Club Property. The Declarant as the Owner of the WestWall Club Unit will construct facilities within this Unit to be used by members of the WestWall Club and their guests as well as by Owners and their guests. membership in the WestWall Club is described in the Membership Plan Documents (the "WestWall Club Property"). The WestWall Club will be privately owned and operated by the Declarant. The WestWall Club and is not a part of the General Common Elements. With respect to its members, the WestWall Club has the exclusive right to determine, from time to time and in its sole discretion and without notice or approval of any change, how and by whom the WestWall Club Property shall be used. By way of example, but not limitation, the WestWall Club has the right to modify the Membership Plan Documents, to reserve memberships, to sell, lease or otherwise dispose of the WestWall Club Property in any manner whatsoever and to any person whomsoever, to add, issue or modify any type, category or class of membership, to recall any membership at any time for any or no reason whatsoever, to make any other changes in the terms and conditions of membership or in the facilities available for use by members and Owners and their guests and to require the payment of a membership deposit, dues and other charges for use privileges. Declarant reserves an easement across and upon the General Common Elements to provide access for members and their guests to the WestWall Club facilities, to conduct and administer social and special events, and to utilize unassigned and vacant parking spaces for members of the WestWall Club. All recreational facilities of the Association other than those attached to the WestWall Club will be part of the General Common Elements, and all expenses attendant thereto shall be Common Expenses as defined in this Restated Declaration.

Any recreational facility which is a General Common Element shall be subject to the Association's Rules and Regulations.

E. Acknowledgements Regarding WestWall Club Property. Each Owner, by acceptance of a deed or recorded contract of sale to a Unit acknowledges that:

- (1) The privileges to use the WestWall Club Property shall be subject to the terms and conditions of the Membership Plan Documents.
- (2) Each Owner by acquisition of title to a Unit releases and discharges forever the Declarant, the WestWall Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents from: (i) any claim that the WestWall Club Unit is, or must be, owned and/or operated by the Association or the Owners; and/or (ii) any claim that the Owners are entitled to use the WestWall Club Unit or its facilities without complying with the terms and conditions of the Membership Rules and Regulations.
- (3) Each Owner and the Association shall jointly and severally indemnify, defend, and hold harmless the Declarant, the WestWall Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents, against and in respect of, and to reimburse the Declarant, the WestWall Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents, on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including, but not limited to, interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that the Declarant, the WestWall Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents, shall incur or suffer, which arise out of, result from or relate to any such owner's claim that the WestWall Club Unit must be owned and/or operated by the Association or the Owners and/or that Owners may use the WestWall Club without complying with the Membership Rules and Regulations.
- (4) That any unauthorized entry into or upon the WestWall Club Unit without permission of the WestWall Club may be deemed a trespass and each Owner shall refrain from, and shall cause all occupants of such Owner's Unit, their guests and invitees to refrain from any unauthorized entry upon the WestWall Club Unit.
- (5) That no representations or warranties which are inconsistent with this Section, either verbal or written, have been made or are made by Declarant or the Association or by any person acting on behalf of any of the foregoing.



- (6) That recreational facilities located upon the Condominium Project other than those owned by the WestWall Club shall be General Common Elements, and that the Executive Board may enter into agreements with other homeowner associations or third parties for the purpose of sharing the use and costs of operating, repairing and maintaining any such recreational facilities on terms and conditions that the Executive Board deems reasonably equitable to the Members.

F. Declarant has reserved an easement on behalf of itself, its successors and its contracted designee to utilize unassigned and vacant parking spaces for WestWall Club members and their guests. This use will be governed by a parking management plan approved by the Association and Declarant. Under this plan, unassigned and vacant parking spaces in the Condominium Project will be available for WestWall Club members and their guests on a short term basis. WestWall Club members and their guests may park in unassigned or vacant parking spaces as directed by the Manager on a daily basis. While vacant assigned and unassigned parking spaces will be allocated to the WestWall Club for daily use, an Owner shall always have the paramount right to occupy such Owner's assigned parking space after providing prior notice to the Manager in accordance with the parking management plan.

G. The Declarant will obtain all necessary government approvals for the implementation and operation of the WestWall Club as well as procuring liability insurance coverage in the nature and amounts which the Executive Board reasonably deems necessary or prudent.

H. A parking club management plan has been approved by Declarant and the Association. This plan specifies the procedures and rules for the use of all unassigned and vacant parking spaces. A copy of the plan is attached hereto as Exhibit E. The plan may not be modified in any manner to impair the rights granted to the WestWall Club Unit Owner in connection with the efficient operation of the WestWall Club and the parking privileges for WestWall Club members and their guests. The plan also may not be modified or amended without the express written consent of the Owner of the WestWall Club Unit.

**ARTICLE XXX
BUILDING C RESERVED DEVELOPMENT SPACE.**

- A. Expansion Area. The reserved subterranean development space in Building C (the "Building C Reserved Development Space"), is denoted on the First Supplemental Map and is reserved by the Declarant for additional development. Such development rights must be exercised within ten years from the date on which this Restated Declaration is recorded. Declarant intends to initially complete the structural elements for this space without finishing the interior portions of the space or providing any functioning utility services. Declarant reserves the right to use and occupy the Building C Reserved Development Space for any purpose consistent with the operation of the WestWall Club or for any other purpose and to establish



the same as a Unit, as a Limited Common Element, or as a General Common Element as Declarant may determine.

**ARTICLE XXXI
GENERAL.**

- A. If any of the provisions of this Restated Declaration or any section, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, use invalidity shall not affect the validity of the remainder of the Restated Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affect thereby.
- B. Any notice required to be sent to any mortgagee under the provisions of this Restated Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last-known address of persons who appear as a mortgagee on the records of the Association at the time of such mailing.
- C. The provisions of this Restated Declaration shall be in addition to and supplemental to the Act of the State of Colorado and to all other provisions of law.
- D. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- E. The provisions of this Restated Declaration shall be liberally construed to effectuate its purpose.

IN WITNESS WHEREOF 31st day of July, 2006.

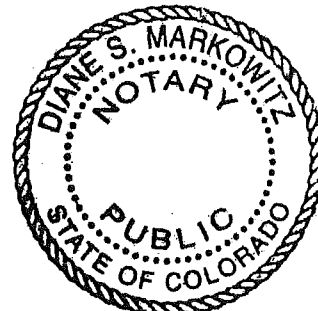
DECLARANT: WESTWALL PARTNERS, LLC, a Colorado limited liability company

BY: Eagle Resort Properties II, LLC, its Manager

By: *Dan L. Fitchett, Jr.*
Dan L. Fitchett, Jr., Managing Member

STATE OF COLORADO)
)
COUNTY OF GUNNISON)

ss.



My Commission Expires 06/03/2008

The foregoing Condominium Declaration was signed and sworn to before me by Dan L. Fitchett, Jr. as Managing Member of Eagle Resort Properties II, LLC, the Manager of WestWall Partners, LLC, a Colorado limited liability company, Declarant, on this

31st day of July, 2006.

Diane S. Markowitz

Notary Public

Address: 525 State River Drive
Crested Butte, CO 81224

My Commission Expires: 6/3/2008

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EXHIBIT A

The T-Bar Tract according to the official plat thereof bearing Reception No. 4552247, Town of Mt. Crested Butte, County of Gunnison, State of Colorado, subject to all covenants, reservations, restrictions, exceptions, easements and rights of way of record.

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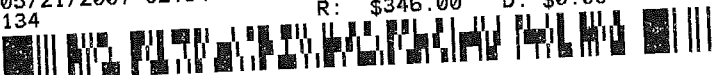


Exhibit B

Unit Owners' Percentage Interest in the Association's General Common Elements

| | <u>Building</u> | <u>Residence</u> | <u>Description</u> | <u>Size</u> | <u>Relative %</u> |
|----|-----------------|------------------|----------------------|-------------|-------------------|
| 1 | | WC | WestWall Club Unit | 6,906 | 7.1739% |
| 2 | A | 101 | 1 Bedroom / 1 Bath | 1,131 | 1.1749% |
| 3 | A | 102 | 2 Bedroom / 2.5 Bath | 1,707 | 1.7732% |
| 4 | A | 103 | 2 Bedroom / 2.5 Bath | 1,560 | 1.6205% |
| 5 | A | 104 | 2 Bedroom / 2.5 Bath | 1,882 | 1.9550% |
| 6 | A | 201 | 1 Bedroom / 1 Bath | 737 | 0.7656% |
| 7 | A | 202 | 2 Bedroom / 2.5 Bath | 1,714 | 1.7805% |
| 8 | A | 203 | 3 Bedroom / 3.5 Bath | 1,952 | 2.0277% |
| 9 | A | 204 | 2 Bedroom / 2.5 Bath | 1,880 | 1.9529% |
| 10 | A | 205 | 1 Bedroom / 1 Bath | 729 | 0.7573% |
| 11 | A | 206 | 3 Bedroom / 3.5 Bath | 2,237 | 2.3238% |
| 12 | A | 207 | 3 Bedroom / 3.5 Bath | 1,953 | 2.0288% |
| 13 | A | 208 | 2 Bedroom / 2.5 Bath | 1,874 | 1.9467% |
| 14 | A | 301 | 2 Bedroom / 2.5 Bath | 1,932 | 2.0070% |
| 15 | A | 302 | 2 Bedroom / 2.5 Bath | 1,693 | 1.7587% |
| 16 | A | 303 | 3 Bedroom / 3.5 Bath | 2,073 | 2.1534% |
| 17 | A | 304 | 2 Bedroom / 2.5 Bath | 1,853 | 1.9249% |
| 18 | A | 306 | 3 Bedroom / 3.5 Bath | 2,327 | 2.4173% |
| 19 | A | 307 | 3 Bedroom / 3.5 Bath | 2,060 | 2.1399% |
| 20 | A | 308 | 2 Bedroom / 2.5 Bath | 1,858 | 1.9301% |
| 21 | A | 401 | 2 Bedroom / 2.5 Bath | 1,920 | 1.9945% |
| 22 | A | 402 | 2 Bedroom / 2 Bath | 1,568 | 1.6288% |
| 23 | A | 403 | 3 Bedroom / 3.5 Bath | 2,873 | 2.9845% |
| 24 | A | 405 | 3 Bedroom / 3.5 Bath | 2,956 | 3.0707% |
| 25 | A | 406 | 2 Bedroom / 2 Bath | 1,615 | 1.6777% |
| 26 | B | 201 | 4 Bedroom / 4.5 Bath | 2,572 | 2.6718% |
| 27 | B | 202 | 3 Bedroom / 3.5 Bath | 2,272 | 2.3602% |
| 28 | B | 301 | 4 Bedroom / 4.5 Bath | 2,564 | 2.6635% |
| 29 | B | 302 | 3 Bedroom / 3.5 Bath | 2,261 | 2.3487% |
| 30 | B | 401 | 4 Bedroom / 4.5 Bath | 3,484 | 3.6192% |
| 31 | C | 101 | 4 Bedroom / 4.5 Bath | 2,380 | 2.4723% |
| 32 | C | 102 | 3 Bedroom / 3.5 Bath | 2,090 | 2.1711% |
| 33 | C | 103 | 3 Bedroom / 3.5 Bath | 1,964 | 2.0402% |
| 34 | C | 104 | 2 Bedroom / 2.5 Bath | 1,501 | 1.5592% |
| 35 | C | 201 | 4 Bedroom / 4.5 Bath | 2,467 | 2.5627% |
| 36 | C | 202 | 3 Bedroom / 3.5 Bath | 2,094 | 2.1752% |
| 37 | C | 203 | 2 Bedroom / 2.5 Bath | 1,585 | 1.6465% |
| 38 | C | 204 | 2 Bedroom / 2.5 Bath | 1,502 | 1.5603% |
| 39 | C | 205 | 3 Bedroom / 3.5 Bath | 2,945 | 3.0593% |
| 40 | C | 301 | 4 Bedroom / 4.5 Bath | 2,395 | 2.4879% |
| 41 | C | 302 | 3 Bedroom / 3.5 Bath | 2,087 | 2.1680% |
| 42 | C | 303 | 2 Bedroom / 2.5 Bath | 1,536 | 1.5956% |
| 43 | C | 304 | 2 Bedroom / 2.5 Bath | 1,517 | 1.5759% |
| 44 | C | 305 | 3 Bedroom / 3.5 Bath | 2,563 | 2.6624% |
| 45 | C | 401 | 4 Bedroom / 4.5 Bath | 3,496 | 3.6316% |



EXHIBIT C

EASEMENTS AND TITLE EXCEPTIONS

As of May 12, 2006

- (1) reservations and exceptions as contained in the patent from the United States of America;
- (2) a non-exclusive easement and right-of-way for ingress and egress for skiers, bicyclists, roller blade and pedestrian access granted to the Town of Mt. Crested Butte, Colorado on the Plat of the T-Bar Tract recorded October 6, 1994, bearing Reception No. 455247;
- (3) access, easements and building setback lines as disclosed on the Plat of the T-Bar Tract recorded October 6, 1994, bearing Reception No. 455247;
- (4) the inclusion of the property within the Mt. Crested Butte Water and Sanitation District and the Town of Mt. Crested Butte Special Improvement District;
- (5) distribution utility easements, including utility easements to Gunnison County Electric Association, Inc. recorded December 12, 1995, in Book 775 at Page 213 and January 4, 1996 in Book 776 at Page 291;
- (6) building and zoning regulations; and
- (7) taxes and assessments for the current year due and payable in the following year.

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EXHIBIT D

RULES AND REGULATIONS

WESTWALL LODGE AT MT. CRESTED BUTTE CONDOMINIUM ASSOCIATION, INC..

1. General. These Rules and Regulations are designed to make living at WestWall Lodge at Mt. Crested Butte Condominiums pleasant and comfortable and to insure harmonious relations. As neighbors, all of us have rights and obligations. The regulations we impose upon ourselves as Owners are for the mutual benefit and comfort of everyone at WestWall Lodge at Mt. Crested Butte Condominiums. Objectionable behavior is not acceptable even if it is not specifically covered in these rules. It is the responsibility of Owners to see that these rules are not violated by their relatives, employees, invitees, guests, agents or lessees.

Rules and regulations to be effective must be enforceable. Accordingly, violations by Owners, their employees, relatives, employees, invitees, guests, agents or lessees will not be allowed. A firm, informative and friendly warning will be given for a minor infraction. If, however, damage to property has occurred, said damage must be immediately paid for by the responsible Owner. Thereafter, an offender of these Rules and Regulations will be subject to whatever action the Executive Board deems necessary including but not limited to fines and penalties as well as any other action the Executive Board is empowered to undertake under the governing documents of the Association.

2. Occupants Bound by Rules. Each Owner of a Unit shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Condominium Instruments and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, as a result of such person's violation of the Condominium Instruments, the Association may take action under this Restated Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.
3. Minimum Heating And Water Shut-Off. It shall be the responsibility of every Owner of every Condominium Unit in the building to heat his or her Unit so as to maintain a minimum temperature in his or her Unit of NO LESS THAN 55 DEGREES FAHRENHEIT from October 1st to May 30th of the year. **This minimum heating requirement must be met even when the Unit is vacant.** These rules are essential to minimize any damage which could result from the freezing of pipes, both individual and common which pass near or through individual Units within the building.

At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or occupant shall immediately inform the



Association's Managing Agent or Executive Board of the problem and of the time needed to repair the equipment. The Executive Board may fine any Owner or occupant up to five hundred (\$500.00) dollars and/or may cause the water service to the violator's Unit to be discontinued for violation of this Rule, in addition to any other remedies of the Association

4. Traffic Regulations. Vehicles using the driveway and parking areas may not exceed five miles per hour. Headlights must be turned on while using these areas after daylight.
5. Signs. Except directional signs approved by the Executive Board, no sign, advertisement or other lettering shall be exhibited, inscribed, painted or affixed by any Owner or other person on any part of the outside or inside of the demised premises of the buildings. No advertisement, announcement or solicitation of any kind may be distributed or passed out in any part of the WestWall Lodge property without prior written consent of the Executive Board.
6. Windows and Balconies. No awnings, enclosures, screens or other projections shall be attached to an exterior wall or balcony by an Owner or occupant. Owners or occupants shall not paint, remodel, repair, alter or modify in any manner the exterior of the Building, including the balconies, balcony doors and windows. All repairs, repainting or other work (except for cleaning and general maintenance) shall be performed by the Association. Any damage caused by the conduct of an Owner or occupant shall be specifically assessed as provided in the governing documents.

Unless otherwise approved in writing by the Architectural Control Committee, all windows that are located in spaces up to seven feet above the floor level which are part of a Unit must have window treatments. Any portion of window treatments which are visible from outside the Unit must be neutral in color and harmonious with the exterior surfaces of the Building.

Balconies, terraces, exterior portions of the Building, and windows shall be used only for the purposes intended, and shall not be used for hanging garments or other objects, or for cleaning of rugs or other household items.

Cooking on any balcony or patio is strictly limited to propane gas grills. Cooking on any other portion of the grounds is prohibited. The only exception to this rule would be a cookout approved by the Executive Board for an Association function. All furniture and movable objects must be removed from balconies when an Owner is not in residence in order to prevent the wind from damaging property owned by others.

The sidewalks, driveways and entrances must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises.

7. Refuse. Disposition of garbage and trash shall be only by the use of garbage disposal units or by the use of sealable trash bags supplied by each Owner and placed neatly in the Association's common trash dumpsters for pick-up by the trash



company. No garbage or trash shall be placed on the General Common Elements or Limited Common Elements outside of the Unit, temporarily or otherwise, except as provided herein.

8. Keys and Locks. The Association may retain a pass key to each Condominium Unit. No Unit Owner shall alter any lock or install a new lock on any door of the premises without the written consent of the Executive Board. In the event such consent is given, the apartment Owner shall provide the Association with an additional key. Failure to comply could result in forced entry by the Association's Executive Board or Managing Agent and will also result in the removal or re-keying of the lock, all at the Owner's expense. Further, each Owner hereby specifically authorizes the Managing Agent or Executive Board to remove or re-key any lock installed in contravention of this provision at the Owner's expense and in addition to assess a penalty against Owner of \$100.00 per month for each month that the Owner refuses to comply.
9. Association Employees. The Executive Board and the Association's Managing Agent are the only persons authorized to give orders or directions to the employees of the Association.
10. Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Executive Board, nothing shall be done or kept on the Condominium, or any part thereof, which would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses. The storage of flammable material that may unreasonably jeopardize the safety and welfare of any person or property is not permitted on or in the Condominium Project.

Noxious, destructive or offensive activity shall not be carried on upon the Condominium. Each Owner and occupant shall refrain from any act or use of his or her Unit which could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Owners or Occupants. No Owner or occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of a portion of the Condominium, or in such a way as to constitute, in the sole opinion of the Executive Board, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. Notwithstanding anything to the contrary herein, no Owner or occupant of a Unit may use or allow the use of the Unit, the Common Elements or the Limited Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 8:00 a.m. that will, in the sole discretion of the Executive Board, unreasonably interfere with the rights, comfort or convenience of the other Owners or occupants.

No Owner shall do any work which, in the opinion of the Architectural Control Committee, would jeopardize the soundness or safety of the Condominium or any



structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without its prior written consent. No damage to or waste of the Common Elements, or any part thereof, or of the exterior of any building constructed upon any Unit shall be permitted by any Owner or occupant. Each Owner and occupant shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner or occupant.

11. Antennas. No radio, satellite dish, cable television or television installation requiring additional wiring or antennas shall be made without the prior written consent of the Executive Board. Any antenna or other wiring erected on the roof, balconies, or exterior walls of the building without the prior consent of the Executive Board in writing is subject to being removed without notice or compensation.
12. Pets. Without the express written permission of the Executive Board (which permission may be revoked at will), no Owner or occupant may keep any pets other than generally recognized household pets on any portion of the Condominium, and no Owner or occupant may keep more than two (2) generally recognized household pets per Unit. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose.

Pets may not be left unattended outdoors or kept outdoors in fenced areas. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, including the Limited Common Elements without the prior written approval of the Architectural Control Committee. Pets are not permitted to run free on the Common Elements or Limited Common Elements at any time. Pets shall be on leashes at all times when outside of a Unit. All pets must be kept off the non-paved areas of the Common Elements at all times except when specific permission is granted by the Manager. Owners of pets must pick up the wastes created by their pets immediately. Owners are responsible to prevent pets from urinating on any landscaping, buildings or property owned by others.

Any breed of dog or other type of animal determined in the sole discretion of the Executive Board to be dangerous may be prohibited from being brought onto or kept on the Condominium at any time by any Unit Owner, occupant, or any guest. Any pet which endangers the health of any Owner or occupant, or which creates a nuisance or unreasonable disturbance, as may be determined in the sole discretion of the Executive Board, must be permanently removed from the Condominium upon 24 hours notice by the Association's Managing Agent or Executive Board. If the Owner or Occupant fails to comply with such notice, the Executive Board may remove the pet. Any pet which, in the sole discretion of the Board, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Executive Board without prior notice to the pet's owner.

13. Smoke Free Environment and Care of General Common Elements. Smoking is strictly prohibited in any part of the General Common Elements and in all public locations within the Condominium Project. Common Elements are to be treated



with care by all Owners, occupants and guests. Any abuse, damage or annoyances created by these occupants and guests will be the responsibility of the Owners. No radios, stereos, speakers or any other apparatus may be used in any Common Element area without the prior approval of the Executive Board. Nothing is permitted that will create an annoyance to other Owners. No furniture not belonging to the Association may be used in any part of the General Common Elements. No part of the Common Elements may be used for storage, vehicle repair, construction or any other purpose unless specific written permission for such use is given by the Association.

14. Abandoned Personal Property. Personal property other than a properly parked vehicle in accordance with the Association's Rules, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Elements other than on a Limited Common Element without the prior written permission of the Executive Board.

If the Executive Board or its designate, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Elements in violation of this subparagraph, then the Executive Board may remove and either discard or store the personal property in a location which the Executive Board may determine.

Prior to taking any such action, the Executive Board shall place a notice on the personal property and/or on the front door of the Unit of the owner of such property, if known, specifying the nature of the violation and stating that after 24 hours the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

If after 24 hours such notice is placed on the personal property and/or the front door of the Unit, the violation continues or thereafter occurs again within six (6) months of such notice, the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

Notwithstanding anything to the contrary, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this subparagraph may, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Executive Board in a location which the Executive Board may determine.

If personal property is removed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Executive Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

15. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, a



including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored on balconies or patios outside the Unit or in any other areas upon the Condominium.

16. Deliveries. Owners and occupants shall be responsible to arrange to have all furniture, etc. delivered directly to a Unit's door. Some companies will only deliver to the building entrance. This should be checked prior to ordering as employees of the Association are not be used for deliveries.

Owners must arrange for all deliveries to be made in a manner that will least disrupt the normal use and privileges of other Owners. Any damage or necessity for cleanup caused by any workman engaged by an Owner or occupant shall be the responsibility of said Owner and occupant.

17. Restricted Area. It is not permissible to use any of the landscaped areas within the property boundaries of the Condominium Project for recreational purposes or to place thereon furniture of any type (chairs, chaise lounges, etc.) sporting equipment or recreational equipment of any kind without the prior written approval of the Executive Board.

18. Individual Unit Floor Coverings. Hard flooring of any kind, including but not limited to, wood, parquet, tile, stone, etc., is limited to those areas as are installed by the Declarant without prior written approval of the Architectural Control Committee.

19. Interval Ownership and Vacation Licenses.

1. Except as permitted by Declarant, no Unit at the WestWall Lodge may be sold, leased, conveyed, transferred or utilized in any fashion for the purpose of permitting any occupancy of the Unit under any arrangement or species of vacation license or non-equity membership entitlements or occupancy rights. In addition, without the consent of Declarant, no Unit at the WestWall Lodge may be sold, leased, conveyed, transferred or utilized in any manner that would permit any occupant of the Unit to exercise time share or interval ownership rights or their functional equivalent.
2. Owners may only enter into short or long term lease agreements for their Units if such agreements comply with the governing documents of the Association and have been approved by the manager. Owners may not enter into any other type of agreement, lease or occupancy arrangement with another person or entity that confers short or long term occupancy rights or privileges for a Unit.



3. Owners shall not be permitted to lease or otherwise allow their Units to be used by any tenant, licensee or occupant for the purpose of scheduling or arranging short term occupancies that are determined by the Executive Board to be in violation of these rules, the governing documents of the Association or any applicable land use and zoning restrictions.
4. The manager may prohibit the use of a Unit or the Association's common elements by any tenant or occupant of a Unit whenever the manager deems such use to be annoying, dangerous, in violation of any law or applicable land use restriction, or in conflict with these rules or the governing documents of the Association.

20. Realtor Open House Showings.

1. The front desk personnel at the WestWall Lodge will assist in directing guests to open house showings and will also be able to distribute marketing literature or other materials for the Unit.
2. Marketing literature or signs may not be displayed at any interior common area location within the WestWall Lodge.
3. While the front desk personnel will gladly answer general questions about the building such as hours and services, the front desk personnel shall refrain from offering any opinions or comments concerning subjects such as the rental histories, amounts of assessments, pricing, decorative styles or maintenance and repair records for Units at the WestWall Lodge.
4. Tours of the common areas or garage areas shall be conducted only by or under the supervision of the front desk personnel.
5. Alcoholic beverages shall not be served in the common areas or in any Unit in connection with open houses sponsored or conducted by realtors.
6. Realtors must inform applicable security personnel of the date and times of any open house showings upon the WestWall Lodge premises. In addition, Realtors must register with the front desk in advance of any scheduled open house and acknowledge receipt of a copy of these rules. Realtors shall strictly comply with all dates and times of any scheduled open house unless permission is granted otherwise by the manager.
7. Realtors may use only one sign in connection with an open house. The sign must be approved by the Architectural Control



Committee and must be placed upon an exterior portion of the WestWall Lodge property at a location that is directed by the manager. The sign may not be placed or installed more than two hours before the open house is to begin, and the sign must be removed immediately at the conclusion of the open house.

8. The realtor, owner or an owner's representative must be present within the Unit at all times during an open house showing.
9. Parking shall be strictly regulated. Realtors and persons attending an open house showing of any Unit shall comply with all applicable parking requirements and shall park only in those locations designated by the manager or by other Association personnel. Parking in the turn-around and porte cochere areas located on the east side of the building is prohibited. Driveways and garage entrances must not be obstructed in any fashion. Violators will be booted or towed.
10. Owners who conduct or permit any open house showings shall be responsible for any damage to the Association's personal property and furnishings as well as any damage to the building or the common elements that arises from the open house showing or is caused by any realtor or open house guest. Owners are responsible for any damages or liability associated with an open house showing and are required to carry adequate liability insurance to protect against all risks which may be connected with the marketing and open house showing of any Unit.

21. Swimming Pool & Pool Area Rules

All persons using the swimming pool or the adjacent patio area at the WestWall Lodge are required to comply with the rules listed below. There is no life guard on duty.

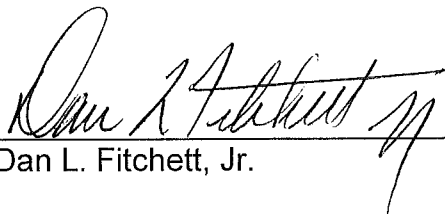
1. The pool is for the use of Unit Owners and their guests or tenants as well as for the use of members of the WestWall Club and their guests. Owners and WestWall Club members are responsible for the supervision and conduct of their guests and tenants.
2. All children under the age of 14 must be accompanied and supervised by an adult at all times.
3. Each Unit Owner and WestWall Club member may bring up to two (2) guests to the pool. All guests must be accompanied and supervised by the Unit Owner or WestWall Club member at all times.



4. The pool furniture is not to be removed from the pool or patio areas. Furniture may not be brought into the pool area.
5. The pool may be reserved for private parties upon application to the WestWall Lodge Manager and compliance with the deposit and insurance requirements established by the Executive Board.
6. No running, pushing, scuffling, splashing or rough play is permitted in the pool area.
7. Glass containers of any kind are prohibited in the pool area.
8. Radios, televisions, CD and tape players, MP3 players and similar devices are strictly forbidden in the pool area without ear phones.
9. Users of the pool area are responsible for removing all articles they bring to the pool area (including towels, books, magazines, etc.) at the time they leave the pool area.
10. Balconies and patios at the WestWall Lodge are not to be used for drying out towels and swim wear.
11. Failure to comply with these regulations will be grounds for the exclusion of a Unit Owner or a WestWall Club member or his or her tenants and guests from the pool area.

Defined terms not specifically defined in these Rules and Regulations shall have the meaning attached to such terms in the Condominium Declaration of the Association.

I certify in my capacity as President of the President of the WestWall Lodge at Mt. Crested Butte Condominium Association and as a member of the Executive Board of the Association that the above rules and regulations were unanimously approved by the members of the Executive Board of the Association this 31st day of July, 2006.



 Dan L. Fitchett, Jr.

ATTACHMENT TO EXHIBIT D
RESIDENTIAL UNIT LEASING ADDENDUM.

1. Definition. "Leasing" is defined as regular, exclusive occupancy of a residential Unit by any person or persons other than the Owner for a period exceeding thirty (30) days for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity, or emolument. Short term rental arrangements for a period of thirty (30) days or less will not be subject to this addendum.
2. General. Residential Units may be leased only in their entirety. All leases shall be in writing, and the Executive Board may require the prior approval of the form of the lease prior to it being effective. There shall be no subleasing of residential Units or assignment of leases unless prior written approval is obtained from the Board. All leases must be for an initial term which exceeds thirty days. The Owner or rental agent for the Owner shall provide the Association with a copy of the lease, the name of the lessee, and the appropriate lease deposit prior to the effective date of the lease and occupancy of the Unit under the lease. The Owner or rental agent acting on behalf of the Owner must make available to the lessee copies of the governing documents, and specifically, the Rules and Regulations.
3. Terms of Lease. Any lease for a residential Unit within the Properties shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a dwelling within the Properties, covenants and agrees that any lease shall contain the following language:
 - (a) Compliance with Governing Documents. The lessee shall comply with all provisions of the Association's governing documents and shall control the conduct of all other occupants and guests of the leased dwelling in order to ensure compliance with the foregoing. The Owner shall be responsible for all violations by such Occupants, notwithstanding the fact that such occupants are fully liable and may be sanctioned for any violation of the governing documents.
 - (b) Enforcement. In the event that an occupant violates the governing documents and a fine is imposed, the Association may assess the fine against the occupant and may require the prior payment of a lease deposit ("Deposit") from which such fines or damages to the Common Element may be deducted after notice and an opportunity for a hearing as provided in the Bylaws. The amount of the Deposit may be established by resolution of the Executive Board and may be graduated in rates based on the length of the lease, type of occupancy, or other facts deemed appropriate in the sole discretion of the Executive Board.

Notwithstanding the foregoing, if the fine is not paid by the lessee for any reason within the time period set by the Board, the Owner shall pay the fine



upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Owner's Unit. Any other enforcement procedure the Association may exercise against an Owner, it may exercise against the lessee or any occupant.

- (c) Eviction. Any violation of the governing documents by an occupant is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the occupant. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the governing documents, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against Owner's Unit.
- (d) Use of Common Area. Except where the Owner also occupies the dwelling, the Owner transfers and assigns to the occupant, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area and Limited Common Area, including without limitation, the use of the parking spaces assigned to the Unit.
- (e) Liability for Assessments. Any Owner delinquent in paying any assessment or any other charge for a period of more than 30 days after it is due and payable, hereby consents to the assignment of any rent received from a lease during the period of delinquency. Upon request of the Board, the lessee or rental agent acting on behalf of the Owner shall pay to the Association all unpaid assessments and other charges payable during the term of the lease and any other period of occupancy by lessee. However, such payments to the Association shall not exceed the monthly rental payments unpaid at the time of the Executive Board's request nor the outstanding assessments owed by such Owner. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to Owner. If a lessee fails to comply with the Executive Board's request, the Executive Board may declare a violation of the governing documents and violation of the lease authorizing eviction. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

This Addendum shall not apply to any leasing transaction entered into by the holder of any first Mortgage on property who becomes the Owner through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.



EXHIBIT E
WESTWALL LODGE AT MT. CRESTED BUTTE
CONDOMINIUM ASSOCIATION
PARKING MANAGEMENT PLAN

Introduction

The WestWall Lodge at Mt. Crested Butte Condominium Association (the "Association"), through its Managing Agent, operates and manages the WestWall Lodge complex on behalf of the unit owners. Under the provisions of the First Amended and Restated Declaration for the WestWall Lodge (the "Declaration"), an underground parking space is assigned to the owners of each unit. The developer of the WestWall Lodge (WestWall Partners, LLC, which is referred to as the "Declarant") has an easement under the terms of the Declaration to utilize unassigned parking spaces as well as assigned parking spaces that are temporarily vacant for membership parking and other activities in connection with the WestWall Club.

The Association and the Declarant wish to take all necessary steps to assure that the assigned parking space for each unit will be available for use by the owners of that unit at all times, and that additional parking spaces can be made available for the use of family members and guests of unit owners. In addition, the Association and the Declarant wish to assure that unassigned and vacant parking spaces may also be used by WestWall Club members and others in connection with the WestWall Club activities.

The parking plan set forth below establishes the governing scheme for the management of the parking spaces which satisfies the needs of unit owners and of the WestWall Club. The parking plan will be implemented and managed by the Association's Manager.

Parking Plan

1. Each residential Unit is assigned one covered parking space. All remaining covered parking spaces are General Common Elements and are reserved for use by the members of the WestWall Club and their guests and by Owners and their guests in accordance with the Restated Declaration and this parking management plan. Any vacant parking space shall be allocated for use in the WestWall Club parking pool in accordance with Declarant's reserved parking space rights and easement as described in the Restated Declaration and subject only to the use by Owners of assigned parking spaces. Owners and occupants shall park only in the parking space assigned to their residential Unit. An Owner may request the Manager to allow the temporary use of an unassigned parking space by a guest of the Owner. Guests and tenants of Owners shall park only in parking spaces designated by the Manager. Uncovered transient parking spaces shall only be used in the manner directed by the Manager. No vehicles may be parked overnight in any of the uncovered transient parking spaces without the prior written consent of the Manager.

2. The covered parking spaces assigned to each residential Unit shall be made available on a first priority basis to the Owner of that Unit, members of the Owner's family and their guests. An assigned parking space will not be utilized for any other purpose until



the Manager has first confirmed that there is no likelihood of any immediate use of the assigned parking space by the Unit Owner or by any member of the Owner's family or guests. In order to keep the Manager informed of future use of assigned parking spaces or the need for additional parking spaces, Owners must notify the Manager by telephone or any other means of communication (such as email or facsimile transmission) of their needs for parking spaces at least 24 hours in advance of their planned arrival at the WestWall Lodge.

3. The Manager shall direct members of the WestWall Club and their guests to park in specific unassigned parking spaces as designated by the Manager. During certain portions of the ski season and during such other times as may be determined by the Association, the Manager shall operate a valet parking service for this purpose. The Manager shall also control parking for WestWall Club functions and activities and direct that vehicles be parked in specific unassigned parking spaces. In the event all unassigned parking spaces are occupied, the Manager may then direct that vehicles be parked in specific assigned parking spaces which are vacant and which are not then in use by a unit owner.

4. The Manager shall monitor the use of the parking garage and police the use of all parking spaces. If a vehicle is parked in a fire lane, is blocking snow removal, is blocking another vehicle or access to another Owner's or occupant's parking space, is obstructing the flow of traffic, is parked on any grassy area or other prohibited area or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed because of noncompliance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Executive Board may elect to impose fines or pursue other available sanctions, rather than exercise its authority to tow.

5. No motorcycle, snow mobile, or any type of all-terrain vehicle shall be driven or parked on the premises of the Association by any Owner, occupant or guest, except for parking same on those areas which may be specified by the Manager. No motorized vehicles of any kind are permitted to be used upon the General Common Elements and Areas for any purposes. Bicycles must be parked and stored in the locations and under the conditions specified from time to time by the Manager.

6. Disabled and stored vehicles are prohibited from being parked on the WestWall Lodge Property. Boats, boat trailers, trucks with a load capacity of one (1) ton or more, recreational vehicles (RV's and motor homes), snow mobiles, all-terrain vehicles, vehicles used primarily for commercial purposes and vehicles with commercial writings on their exteriors are also prohibited from being parked or stored on the WestWall Lodge Property except in areas which may be designated by the Board. Notwithstanding these restrictions, and only after permission has been obtained from the Manager, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily in designated loading zones or other areas upon the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided, that no such vehicle shall be authorized to remain on the Common Elements overnight or for any purpose without the written consent of the



Manager.

- (a) For purposes of this section, a vehicle shall be considered "disabled" if it does not have a current license tag or is inoperable. A vehicle shall be considered "stored" if it remains on the WestWall Lodge Property for seven (7) consecutive days or longer without the prior written permission of the Manager.
- (b) If any vehicle is parked on any portion of the WestWall Lodge Property in violation of this section or in violation of the Association's rules and regulations, the Manager may immediately cause the vehicle to be towed at the expense of the owner of the vehicle without prior notice.
- (c) With the exception of windshield replacements or repairs, vehicle repair or maintenance work or activities may not be performed in the garage area or at any other location upon the WestWall Property.

7. Parking by WestWall Club members and their guests as well as all parking for WestWall Club functions and activities shall be limited to short term parking. No vehicle parked for this purpose may remain in a parking space for longer than 12 hours.

8. The Manager shall have the right to limit or refuse parking privileges for unit owners and their guests or for WestWall Club members and their guests in the event any vehicle is deemed to be of a size or nature which presents safety, logistical or other problems to the Association.

9. Vehicles may not be stored in the parking garage without the written permission of the Manager. Any stored vehicle shall be covered and otherwise protected in the manner determined by the Manager.

10. Personal property of any nature may not be stored or left in the parking garage outside of a vehicle.

11. The Manager or the Association shall have the right to impose such additional parking rules and regulations as may be deemed appropriate.

12. Vehicles which are in violation of any provision of this plan or any rule or regulation issued by the Manager or the Association shall be towed immediately at the owner's expense. The Manager will make a reasonable effort to notify any unit owner or WestWall Club Member before directing that a vehicle be towed. The Association may enforce provisions of this plan or any parking rules and regulations by levying fines and pursuing such further enforcement and remedial measures as may be deemed appropriate.