



2967310

Page: 1 of 46

12/03/2008 02:08P

Boulder County Clerk, CO CONDO DEC R 231.00 D 0.00

DECLARATION OF CONDOMINIUM

FOR

1201 BALSAM

{00251565 / 9}

ROB

20



CONDOMINIUM DECLARATION

**FOR
1201 BALSAM**

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR 1201 BALSAM CONDOMINIUMS (this "Declaration") dated as of December 3rd 2008, shall be effective upon recordation and is made by 1201 Balsam, LLC, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property located in the City and County of Boulder, Colorado, more particularly described on Exhibit A, attached hereto and made part of this Declaration by this reference (the "Property"). Declarant hereby makes the following grants, submissions and declarations:

**ARTICLE I
IMPOSITION OF COVENANTS**

Section 1.1 Division Into Units; Special Declarant Rights. The Project is hereby divided into twenty six (26) separate Units as identified on the Condominium Map and on Exhibit B as Unit numbers 101-104, 201-206, 301-306 and G1-G10. Declarant reserves the right to create as many as thirty (30) separate Units at the Project as shown on the Condominium Map as a Special Declarant Right, subject to the obligations and restrictions imposed by this Declaration and the Act. Declarant further reserves the right to create up to four (4) additional Garage Units, which additional Garage Units are shown on the Condominium Map, subject to the obligations and restrictions imposed by this Declaration and the Act.

Section 1.2 Right to Combine Units. Declarant and all Owners hereby reserve the right to combine physically the area or space of one Unit which area or space of one or more adjoining (horizontally or vertically) Units; provided, however, that Declarant shall not exercise said right without obtaining any necessary governmental approvals and the written consent of any First Mortgagee having an interest in said Units. In the event of any such physical combining of Units to create a combined Unit, such combined Unit shall also include the combining of fixtures and improvements and of the undivided interests in Common Elements appurtenant to the Units so combined, and may also include certain portions of the corridors appurtenant to the exterior walls of the Units so combined. Declarant reserves the right to designate and convey to any purchaser of any such combined Unit, as additional Limited Common Elements appurtenant thereto, any walls, floors, or other structural separations between the Units so combined, or any space which would be occupied by such structural separations but for the combination of such Units; provided, however, that such walls, floors, or other structural separations or such space shall automatically become General Common Elements if the combined Units become subject to separate ownership in the future.

Section 1.3 Reservation of Declarant. Declarant contemplates, and the Plat in effect as of the date hereof permits, the development of the Units reflected on the



Condominium Map. Declarant reserves the right to develop such additional Units as may be permitted by any subsequently approved Plat.

Section 1.4 Inseparability. Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit together with all the rights provided to a Unit Owner herein. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations, created by law or by this Declaration.

Section 1.5 Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain undivided. By the acceptance of its deed or other instrument of conveyance or assignment, each Owner specifically waives its right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section 1.5 may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly or severally, from the parties violating the same, the actual attorney's fees, costs, expenses and all damages which the Association incurs in connection therewith.

Section 1.6 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, all Owners, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**ARTICLE 2
DEFINITIONS**

The following words, when used in this Declaration or any Supplemental Declaration, shall have the meanings designated below unless the context shall expressly provide otherwise:

Section 2.1 "Act" means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory.

Section 2.2 "Association" shall mean and refer to 1201 Balsam Owners Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and Officers.

Section 2.3 "Common Elements" shall mean and refer to the totality of:

RECORDER'S NOTE:
SCANNED AS RECEIVED.
IMAGE REFLECTS QUALITY
OF RECORDED DOCUMENT



2967310

Page: 4 of 46
12/03/2008 02:08P
D 0.00

Boulder County Clerk, CO CONDO DEC R 231.00

- (a) The Property excluding any individual Unit; and
- (b) Any sidewalks, parking areas, walkways, paths, grass, shrubbery, trees, driveways, street, fire lanes and landscaping located on the Property; and
- (c) In general, all other parts of the Project existing for the common uses of the Owners, and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

Section 2.4 "Condominium Building" shall mean and refer initially to the building on the Property as shown on the Map. [Include garages]

Section 2.5 "Common Interest Community" shall mean the Project with respect to which an Owner is obligated to pay for real estate taxes, insurance premiums, maintenance or improvements.

Section 2.6 "Condominium Map" ("Map") shall mean and refer to the Condominium Map for 1201 Balsam, recorded in the office of the Clerk and Recorder of the County of Boulder at Reception No. 2967309.

Section 2.7 "Declarant" shall mean and refer to 1201 Balsam, LLC, a Colorado limited liability company, its successors and assigns.

Section 2.8 "Declarant Control Period" shall mean the period of time commencing on date of incorporation of the Association and terminating on the earliest of the following events: (i) sixty (60) days after Declarant has conveyed to Owners a number of Units equal to seventy-five percent (75%) of the maximum number of Units permitted pursuant to this Declaration; (ii) two (2) years after the first conveyance of a Unit by Declarant in the ordinary course of business; (iii) two (2) years after any right of Declarant to add new Units was last exercised; or (iv) the date on which Declarant voluntarily relinquishes such power evidenced by a notice recorded in the Office of the Clerk and Recorder of Boulder County, Colorado.

Section 2.9 "Declaration" shall mean and refer to this Condominium Declaration as it may be amended from time to time.

Section 2.10 "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security interest recorded in the records of the office of the Clerk and Recorder of the County of Boulder, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments) and those assessments which may be imposed by this Declaration, a lien of which is made superior by the Act.

Section 2.11 "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage.



Section 2.12 "General Common Elements" shall mean and refer to all of the Common Elements except the Limited Common Elements.

Section 2.13 "Limited Common Elements" shall mean and refer to that portion of the Common Elements, designated in this Declaration, or on the Condominium Map, or by the Act, which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Unit, or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include any utility, heating and hot water equipment contained within or providing exclusive service to any such Unit intended for its exclusive use.

Section 2.14 "Owner" shall mean and refer to any record owner (including Declarant and including a contract seller), whether one or more persons or entities, of a fee simple title interest to any Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

Section 2.15 "Plat" means those certain documents relating to the easements, conditions, covenants, restrictions, reservations and notes on the Plat of Carlson's subdivision, a resubdivision of lots 41, 42, 43 and 44, Jos. Wolff's subdivision recorded March 18, 1948 under reception number 490554 and any replat thereof.

Section 2.16 "Project" shall mean and refer to the totality of all the Property, the Condominium Building, Units and Common Elements.

Section 2.17 "Unit" shall mean and refer to an individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings as shown on the Condominium Map, together with the undivided interest in the Common Elements appurtenant to the Unit and shown on the Condominium Map. The formula for determining the ownership interest in the Common Elements shall be a percentage equal to the square footage of each Unit as shown on the Condominium Map divided by the total square footage of all Units as shown on the Condominium Map, times 100; should the Declarant develop all Units pursuant to Section 1.1, above, the percentages shall be as presented in Exhibit B. Unit numbers 101-104, 201-206, and 301-306 shall be referred to herein as the "Residential Units". Unit numbers G1-G10 shall be referred to herein as the "Garage Units". "Unit" shall refer to both Residential Units and Garage Units, collectively. Residential Units are to be used for residential purposes. Garage Units are to be used for garage purposes. All measurements of the Units were conducted by a third party surveyor and are shown on the Condominium Map and are subject to the notes on the Condominium Map.

ARTICLE 3 CONDOMINIUM MAP



Section 3.1 The Condominium Map. The Condominium Map and amendments thereto, if any, covering the Property shall be recorded in the Office of the Clerk and Recorder of the County of Boulder, Colorado, prior to conveyance of the first Unit shown on such Condominium Map.

Section 3.2 Content. The Condominium Map shall depict and show at least the following: (a) the legal description of the land and a survey thereof; the location of the Condominium Building in reference to the exterior boundaries of the land; (b) the floor and elevation plans; (c) the location of the Units, both horizontally and vertically; (d) a designation of which Common Elements contained in the Condominium Building are Limited Common Elements; and (e) the Unit designations. The Condominium Map shall contain the certificate of a registered professional engineer, licensed architect or registered land surveyor certifying that the Condominium Map substantially depicts the location and the horizontal and vertical measurements of the aforesaid information and shall be deemed an affirmation that the Condominium Map was prepared subsequent to substantial completion of the improvements shown thereon (with the exception of the four (4) additional Garage Units referenced in Section 1.1 above). In interpreting the Condominium Map, the existing physical boundaries of each separate Unit, as constructed, shall be conclusively presumed to be its boundaries.

Section 3.3 Amendments. Declarant hereby reserves unto itself the right, from time to time, without obtaining the consent or approval of any Owner or First Mortgagee, to amend the Condominium Map in order to conform such Condominium Map to the actual location of any Improvement(s) constructed, installed or erected on the Property and to establish and/or designate any General Common Elements as Limited Common Elements. Declarant further reserves the right to construct additional structures or improvements on the General or Limited Common Elements for the use of the Owners or an Owner. The rights accorded to Declarant in this Section 3.3 shall expire upon the conveyance by Declarant of the last Unit.

**ARTICLE 4
RIGHTS OF OWNERS IN COMMON ELEMENTS**

Section 4.1 Rights of Owners; Easements of Enjoyment And Rights of Ingress and Egress. Every Owner, its tenants, guests, family members, and licensees shall have a right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to its Unit, plus a right and easement of ingress and egress over, across and upon the General Common Elements and those Limited Common Elements appurtenant to its Unit for the purpose of access to and from its Unit, parking areas, public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass automatically with the transfer of title to the Owner's Unit; provided, however, that such rights and easements shall be subject to the following:



(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations contained in this Declaration and the Condominium Map; and

(b) The right of the Association to suspend the voting rights of any Owner for any period during which any Association Assessment against such Owner or against such Owner's Unit remains unpaid, and, for any period not to exceed sixty (60) days, as a result of such Owner's infraction, or the infraction by any tenant of such Owner or such Owner's tenants, guests, family members, or invitees, of any rule or regulation of the Association; and

(c) The right of the Association to adopt, from time to time, rules and regulations concerning the Common Elements and any facilities located thereon, as the Association may determine is necessary or prudent; and

(d) The right of the Association to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project; and

(e) Subject to the Act, the right, but not the obligation, of the Association, from time to time, to hire an on-site manager; and

(f) The right of the Association to limit the number of guests or invitees of each Owner which may use any facilities contained in the Common Elements.

Section 4.2 Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to its Unit.

**ARTICLE 5
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 5.1 Membership. Every Owner of a Unit which is subject to assessment hereunder shall be a member of the Association and shall remain a member for the period of its ownership of a Unit; provided, however, that in no event shall the total number of Association votes which are cast with respect to such Unit exceed one (1), except as set forth in Section 5.2 below. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

Section 5.2 Classes of Voting Membership. The Association shall have two (2) classes of voting membership: one (1) class for Residential Unit Owners, and one (1) class for Garage Unit Owners. Each class shall vote as follows:

(a) All Residential Unit Owners, including the Declarant so long as Declarant owns an interest in a Residential Unit, shall be members of the Association and shall be entitled to one (1) vote for each Residential Unit owned for all matters that apply



only to the Residential Units for which a vote is required. The Garage Unit Owners shall have no voting rights for matters that apply only to the Residential Units.

(b) All Garage Unit Owners, including the Declarant so long as Declarant owns an interest in a Garage Unit, shall be members of the Association and shall be entitled to one (1) vote for each Garage Unit owned for all matters that apply only to the Garage Units for which a vote is required. Residential Unit Owners shall have no voting rights for matters that apply only to the Garage Units.

(c) All Residential Unit Owners shall be entitled to two (2) votes for each Residential Unit owned, and all Garage Unit Owners shall be entitled to one (1) vote for each Garage Unit owned, for all matters that apply to both the Residential Units and Garage Units for which a vote is required.

Section 5.3 Reservation. Notwithstanding any provision to the contrary contained in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations of the Association, Declarant hereby reserves unto itself the right to appoint the Board of Directors of the Association until the end of the Declarant Control Period. Prior to such time, this Section 5.3 shall not be amended without Declarant's further written consent. The Declarant also reserves the right to have and maintain a sales office in one of the Units until all of the Units have been sold and, thereafter, to own a Unit as an Owner.

ARTICLE 6 THE ASSOCIATION

Section 6.1 Management and Maintenance Duties and Duty to Establish Reserve Account. Subject to the rights of Owners as set forth in this Declaration, the Association shall:

(a) have all of the responsibility, powers, authority and duties permitted pursuant to the Act necessary and proper for the management, control, maintenance, repair, replacement and improvement of the Common Elements (including furnishings and equipment, if any, related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair, including without limitation, any utility, heating and plumbing appurtenances which are part of the central system of the Condominium Building; provided, however, that each Owner shall be responsible for exclusive maintenance and repair of all plumbing fixtures which are part of its Unit, and not an integral part of the central system of the remainder of the Condominium, together with all electrical outlets and switches, domestic hot water equipment, furnaces and appurtenances which solely service such Owner's Unit. Each Owner shall also be responsible for keeping the Limited Common Elements, or portions thereof, designated for use solely in connection with its Unit in a good, clean, sanitary and attractive condition;

(b) maintain all lobbies, entranceways, conference rooms, mail rooms, restrooms, walkways, driveways, parking areas, grass, trees, shrubbery, flowers and similar landscaping constituting part of the Common Elements.



The expenses, costs and fees of such management, operation, maintenance, repair, replacement and improvement by the Association, shall be part of the annual and any special common expense assessment levied by the Association, and the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees, regardless of the amounts thereof. The Association shall reasonably allocate common expenses and reserves of the Association between the Residential Units, if such common expenses and reserves apply exclusively to the Residential Units, the Garage Units, if such common expenses and reserves apply exclusively to the Garage Units, and the Residential Units and Garage Units together, if common expenses and reserves of the Association that apply to both the Residential Units and Garage Units.

Section 6.2 Public Health. The Association may provide public health and safety services within the Project, including but not limited to, security personnel, security systems, fire protection facilities and a fire water system, which may include periodic fire prevention inspections and equipment certifications.

Section 6.3 Marketing. The Association may provide suitable and continuing programs to promote the Project including but not limited to stimulating and coordinating major events, advertising and placing articles in news and other media, and establishing uniform standards for promotional programs of individual members.

Section 6.4 Environmental. The Association may monitor air, soil and water quality in the Project to determine trends and to detect violations of federal, state or local environmental laws. Neither Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be required to undertake such monitoring, or be liable to any third party for any action which they take, or failure to act, in connection with the inspection or monitoring of air, soil or water quality in the Project.

Section 6.5 Enforcement. The Association shall have the power to fully enforce the covenants and restrictions contained in this Declaration. Expenses of such enforcement and review will be paid by the Association and will constitute a Common Expense hereunder. Each Owner shall have the power to enforce the covenants and restrictions contained in this Declaration to the extent permitted or provided for by the Act or other applicable laws.

Section 6.6 Owner's Negligence: Prohibition of Certain Activities.

(a) Each Owner by acceptance of his deed or other instrument of conveyance or assignment, any employee, tenant, guest, invitee or licensee of Owner, by entry upon this Common Interest Community, agrees to comply strictly with the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Further, nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the



Common Elements, or any part thereof, shall be committed by any Owner, or by any tenant, employee, guest, invitee or licensee of any Owner. The Association, or in a proper case, an aggrieved Owner, shall have the power to enforce the provisions of this Declaration and the Articles, Bylaws, Rules and Regulations, and the decisions and resolutions of the Association pursuant thereto. The Association shall take such action as the Board deems necessary or desirable to cause such compliance by each Owner and his tenants, employees, guests, invitees and licensees. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Articles, Bylaws, Rules and Regulations, and the decisions and resolutions of the Association pursuant thereto, by any one or more of the following means:

(i) by commencing and maintaining actions to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolutions of the Association, by permanent injunction or otherwise;

(ii) by commencing and maintaining actions to recover damages for breach of any of the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolutions of the Association;

(iii) by exclusion, after Notice and Hearing as provided in the Bylaws, of any Owner or his guest from use of any General Common Elements during and for up to sixty (60) days following any breach of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolution of the Association, by such Owner or his guest, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues;

(iv) by levying and collecting from any Owner or its tenants, employees, guests, invitees or licensees after Notice and Hearing as provided in the Bylaws, reasonable and uniformly applied nondiscriminatory fines and penalties established in advance in the Bylaws and in the Rules and Regulations of the Association for breach of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolutions of the Association and its Board by such Owner or his guest. Owners shall have the power to enforce the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations against the Association;

(v) by suspension of the right of any Owner to vote for up to sixty (60) days following any breach of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolution of the Association, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues.

(b) Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or



activity committed by it, its tenants, employees, guests, invitees or licensees, which is in violation of this Section.

(c) All attorneys' fees and other costs of enforcing this Declaration, the Articles, Bylaws, Rules and Regulations, decisions and resolutions of the Association, and the foregoing indemnification incurred by the Association, or in a proper case by an aggrieved Owner, shall be assessed against the Owner found to be in violation and such assessment shall become a lien against such Owner's Unit and shall be enforced and collected in the same manner as all other assessments as provided herein.

(d) The conveyance or encumbrance of a Unit shall be deemed to be made subject to all of the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations, and shall be binding upon each grantee or mortgagee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

(e) A Unit may not be conveyed pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes.

(f) All leases and rental agreements shall be subject to the reasonable requirements of the Association.

(g) The Association may rent to, lease to or authorize use by one or more Unit Owners, as it deems appropriate, part or all of any parking area which has not been conveyed to an Owner, as identified on the Condominium Map as General Common Elements.

Section 6.7 Management Agreements and Other Contacts.

(a) The Association shall have the right to enter into a contract or arrangement ("Management Agreement") with a person, firm, corporation, or other entity engaged or employed as an independent contractor ("Managing Agent") that provides management services entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance and management of the Project and/or the performance of Association functions, and/or the performance of obligations created by agreements permitted herein. Notwithstanding any provisions contained in this Declaration to the contrary, it is the intent of this Declaration that the Board of Directors shall not be able to independently terminate the Management Agreement pursuant to Section 38-33.3-305 of the Act without a vote of a majority of the members of the Board of Directors. The Managing Agent shall not have the authority to make expenditures except upon prior approval and direction by the Board of Directors. The Board of Directors shall not be liable for any omission or improper exercise by a Managing Agent of any duty, power or function so delegated by written instrument executed by or on behalf of the Board of Directors.



(b) The Association shall have the right to enter into a contract or arrangement for the provision of other services necessary or desirable to the operation of the Association or the Project including, without limitation, accounting and legal professionals.

(c) Any Management Agreement, employment contract or lease of recreational of parking areas or facilities entered into by Declarant (or an affiliate of Declarant) during the Declarant Control Period, and any contract or lease, including franchises and licenses, to which Declarant (or an affiliate of Declarant) is a party, shall provide that the Association shall have a right of termination which is exercisable without penalty at any time after the Declarant Control Period expires upon not more than ninety (90) days' notice to the other parties thereto. This Section 6.7(c) shall not apply to ground leases.

Section 6.8 Acquiring and Disposing of Personal Property. The Association may acquire, own and hold for the use and benefit of all 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 deemed to be owned by the Owners; in the same undivided proportion as their respective undivided interests in the Common Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, provided that such use shall not hinder or encroach upon the lawful rights of other Owners.

Section 6.9 Promulgation of Rules and Regulations. The Board of Directors of the Association may promulgate and enforce reasonable rules and regulations governing the use of the Units and the Common Elements, including, without limitation, enforcement of the same by levying and collecting fines for the violation thereof, which rules and regulations shall be consistent with the rights and duties established in this Declaration ("Rules and Regulations"). A list of the initial Rules and Regulations governing use of the Units and the Common Elements shall be prepared by the Board of Directors of the Association and made available to each Owner. These Rules and Regulations may be revised from time to time by the Board of Directors and shall be effective upon mailing to all Unit Owners.

Section 6.10 New Additions to Common Elements. Subject to the other provisions of this Declaration, the Association shall have the right to construct, purchase or otherwise acquire new property or improvements to the Property which will constitute new additions to the Common Elements. Ownership of, and the common expenses of any such additions to the Common Elements, shall be apportioned among all Units Owners in proportion to the respective undivided interest in the Common Elements appurtenant thereto, as shown on Exhibit B attached hereto. The construction, purchase or other acquisition of new additions to the Common Elements shall not affect an Owner by way of modification of its voting power in the Association.



Section 6.11 Contracts, Licenses and Agreements. The Association, through its Board of Directors, shall have the right to enter into, make, perform or enforce contracts, leases, licenses, agreements, easements and/or rights-of-way, for the use by Owners, other persons, their employees, tenants, guests, licensees and invitees, of real property for pedestrian or vehicle access, ingress and egress to and from the Project, or any portion thereof, for vehicular parking, for on-site management or for other agreements for the provision of services to the Property. Any of such contracts, leases, licenses, agreements, rights-of-way or easements shall be upon such terms and conditions as agreed to by the Board of Directors of the Association, which may include provisions by which the Association covenants and agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the improvements thereto and thereon, providing such service, or other amounts which the Board of Directors determines are necessary to secure such contracts, licenses and agreements, and any such costs and expenses, licenses and agreements, and any such costs and expenses shall be treated by the Association as common expenses pursuant to Article VII hereof.

Section 6.12 Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 38-33.3-316(8) of the Act. All financial and other records shall be made available for examination by any Owner or such Owner's authorized agents during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee permitted by the Act for copying such materials.

Section 6.13 Implied Rights of the Association. The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may execute every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

6.13.1 adopt and amend the bylaws and rules and regulations of the Association;

6.13.2 adopt and amend budgets for revenues, expenditures and reserves and collect Assessments, including without limitation assessments for common expense annual assessments, from Owners;

6.13.3 hire and terminate Managing Agents and other employees, agents and independent contractors;

6.13.4 institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;

6.13.5 make contracts and incur liabilities;



6.13.6 regulate the use, maintenance, repair, replacement and modification of the Common Elements and the Property;

6.13.7 cause additional improvements to be made as part of the Common Elements, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Owners, lessees, guests and members of the general public; newspaper racks; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; drainage facilities; monuments; parking areas; ducts, shafts and flues; storage facilities for supplies and equipment; earth walls, retaining walls and road supports; lighting; signage;

6.13.8 acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; provided, however, that the fee interest of a Common Element may not be conveyed or subjected to a security interest unless: (a) such action receives approval of all of the Owners; (b) such action is evidenced by a written agreement, or a written ratification of an agreement, executed in the same manner as a deed by the required number of Owners; and (c) such action does not deprive any Unit of its rights of ingress, egress and support;

6.13.9 impose and receive any payments, fees or charges for the use, rental or operation of Common Elements;

6.13.10 impose and receive charges for late payments of assessments, recover reasonable attorney's fees and disbursements and other costs of collection for assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Association Documents (defined in Section 11.10);

6.13.11 impose and receive reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

6.13.12 provide for the indemnification of the Association's officers and directors and maintain directors' and officers' liability insurance;

6.13.13 assign its right to future income, including without limitation, its right to receive assessments;

6.13.14 perform any Association function by, through or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable; and

6.13.15 enjoy and exercise any other power or authority that similar associations may now or hereafter enjoy or exercise in the state of Colorado.



Section 6.14 Indemnification. The Association shall be obligated to and shall indemnify and defend Declarant and hold it harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements, arising with respect to any operations of the Association or any Common Element or any activities undertaken by the Association pursuant to this Declaration.

Section 6.15 Cooperation with Quasi-Governmental Entities. The Association may contract or cooperate with any quasi-governmental entities as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other entities, for the benefit of Owners and their lessees and guests. The costs associated with such efforts by the Association (to the extent not chargeable to other entities) shall be a Common Expense.

Section 6.16 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON ELEMENTS, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS, LESSEES OR GUESTS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR OF THE COMMON ELEMENTS, CAUSED BY ANY LATENT CONDITION OF THE COMMON ELEMENTS TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

**ARTICLE 7
ASSESSMENTS**

Section 7.1 Personal Obligation for Assessments; Allocation of Assessments. All Owners, and including any purchaser or its assigns under an executory land sales contract, covenant and agree and shall be personally obligated to pay to the Association:

- (a) annual common expense assessments imposed by the Association to meet the common expense and reserve requirements of the Association, as well as to pay any expenses imposed on the Association (as may be allocable to one Unit or Owner, as applicable);
- (b) special assessments, pursuant to Section 7.6 of this Declaration;
- (c) any capitalization assessment that the Association may elect to impose upon acquisition of record title, pursuant to Section 7.3 of this Declaration; and
- (d) other charges, fees and assessments, including without limitation default assessments, as provided in this Declaration.

All assessments for common expenses and reserves of the Association that apply to both the Residential Units and Garage Units for each Unit shall be calculated by multiplying



2967310

Page: 16 of 46
12/03/2008 02:08P
D 0 00

Boulder County Clerk, CO CONDO DEC R 231.00

the total annual amount of the assessment due, pursuant to Section 7.2 and Section 7.6 as either is applicable, by the square footage ratio of each Unit as set forth on Exhibit B attached hereto. All assessments for common expenses and reserves of the Association that apply exclusively to the Residential Units for each Residential Unit shall be calculated by multiplying the total annual amount of the assessment due by the square footage ratio of each Residential Unit relative to the square footage of all Residential Units. All assessments for common expenses and reserves of the Association that apply exclusively to the Garage Units for each Garage Unit shall be calculated by multiplying the total annual amount of the assessment due by the square footage ratio of each Garage Unit relative to the square footage of all Garage Units. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees and charges attributable to their Unit. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them or if required by applicable law. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by non-use of the Common Elements or any facilities contained therein or by abandonment or leasing of its Unit. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against its Unit, as well as all charges for separately metered utilities servicing its Unit. The charges for utilities which are not separately metered shall be included in the annual common expense assessments levied by the Association pursuant to Section 7.2.

Section 7.2 Amount of Common Expense Assessments.

(a) The annual common expense assessment for each Unit shall be determined by the Association. The amount of the monthly installment for each Unit shall be divided by the number of months in the first annual common expense assessment year.

(b) Commencing with the second assessment year and thereafter, the annual common expense assessment shall be based upon the Association's advance budget of all cash requirements which may be required by the Association to provide for the Association's advance budget of all cash requirements which may be needed by the Association to provide for the payment of all estimated expenses related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration and improvement of the Property, the Common Elements and personal property owned by the Association, except as otherwise provided in this Declaration. The amount of said advance budget may include, but shall not be limited to: (1) expenses of management; (2) premiums for insurance; (3) maintenance and repair of the exterior of the Condominium Building; (4) landscaping and care of common grounds; (5) common lighting, heating and electrical; (6) maintenance, repairs and renovations of Common Elements; (7) trash collection; (8) wages; (9) common water and sewer charges; (10) taxes; (11) legal and accounting fees; (12) management fees; (13) costs, expenses and liabilities incurred by the Association's Board of Directors on



behalf of the Owners under or by reason of this Declaration, the Articles of Incorporation or Bylaws of the Association; (14) the creation of reasonable reserves, working capital and/or sinking funds; and (15) any and all other costs and expenses relating to the Common Elements and/or the Project.

(c) Written notice of the Budget and any change in the amount of the actual common expense assessment (in the event such common expense assessment changes before a new annual Budget is adopted) shall be sent to every Owner subject thereto at least thirty (30) days in advance of the effective date of such change. Such notice shall set a date and time for a meeting of the Owners not less than fourteen (14) days nor more than sixty (60) days after mailing or delivery of the notice. Unless at such meeting a majority of the Unit Owners reject the Budget and the proposed assessment (whether or not a quorum is present at the meeting), the Budget and the assessments as proposed in the notice are ratified. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget.

Section 7.3 Reserves and Capitalization Assessments. The Association shall establish a reserve fund for the maintenance, repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. Any future reserve fund may be funded through the monthly payments of the annual common expense assessments or may be created from a capitalization assessment, required upon the sale of an Owner's Unit from the purchaser of such Unit. The reserve fund payments and any capitalization assessment shall not be considered advance payments of annual assessments and shall not be subject to return to an Owner upon the sale of a Unit; nothing contained in the foregoing shall prohibit an Owner, however, from contracting for the transfer of the value of such payments from the purchaser of such Owner's Unit. Any reserve fund or working capital fund must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any of its expenses, reserve contributions or construction costs, and not to make up any budget deficits during the Declarant Control Period.

Section 7.4 Date-of Commencement of Annual Common Assessments. The initial annual common expense assessment shall commence on the date of conveyance by Declarant of the first Unit, and the second and each subsequent annual common expense assessment period shall correspond with the fiscal year of the Association. The annual common expense assessments shall be made due and payable in twelve (12) consecutive monthly installments per annum on such dates as determined by the Board, provided that the first annual common expense assessment shall be adjusted according to the number of months in the first annual common expense assessment year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last installment due.

Section 7.5 Rate of Assessment. Both annual Common Expense and special assessments shall be assessed against all Units sufficient to meet the Association's advance budget, in accordance with the principles set forth in Section 7.1 hereof.



Section 7.6 Special Assessments. In addition to the assessments authorized above, the Association may, at any time and from time to time, determine, levy and assess in any assessment year, which determination, levy and assessment may be made by the Board with the consent of two-thirds (2/3) of the votes of the members of the Association who are voting in person or by proxy at a duly called meeting for that purpose, a special assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any deficit remaining from a previous period and the unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Common Elements, specifically including without limitation any fixtures and personal property relating thereto. The amounts determined, levied and assessed pursuant hereto shall be set against each Unit in accordance with the principles set forth in Section 7.1 hereof and shall be due and payable as determined by the Association's Board of Directors and as set forth in the Notice of Assessment promulgated by the Board of Directors. Notice in writing setting forth the amount of such special assessment per Unit and the due date for payment thereof shall be given to the Owners not less than thirty (30) days' prior to such due date.

Section 7.7 Notice of Quorum for Action Authorized Under Section 7.6. Written notice of any meeting called for the purpose of voting on a special assessment pursuant to Section 7.6 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.8 Lien for Assessments. The assessments, charges and fees, including without limitation, any default assessment, as well as any monthly or other installments thereof, provided for in this Declaration (together with any and all interest, costs, late charges, expenses and reasonable attorney's fees which may arise under the provisions of this Declaration), shall be burdens running with, and a perpetual lien in favor of the Association upon the specific Unit to which such assessments apply. To evidence such lien upon a Unit, the Association may prepare a written lien notice setting forth a description of the Unit, the amount of assessments thereon which are unpaid as of the date of such lien notice, the name of the Owner or Owners thereof and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors of the Association, an officer of the Association or any agent authorized by the Board of Directors and shall be recorded in the office of the Clerk and Recorder for the County of Boulder, Colorado. The recording of any written lien notice shall not constitute a condition precedent nor delay the attachment of the lien, but such lien is a perpetual lien upon each Unit and attaches without notice at the beginning of the first day of any period for which any assessment is levied or assessed.



Section 7.9 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate of eighteen percent (18%) per annum from the due date, or at such lesser rate as may be set by the Board of Directors, not to exceed any maximum rate established by law. The Board of Directors of the Association may assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefore. In the event that any such assessment, charge or fee, or monthly or other installment thereof, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or cross claim for such relief in any action) against any Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Unit, then all unpaid assessments, charges and fees, and all unpaid monthly or other installments thereof, any and all late charges and accrued interest under this Section 7.9, the Association's costs, expenses and reasonable attorney fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same.

Section 7.10 Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Unit shall not affect a lien for assessments, charges or fees levied hereunder except that in the case of a sale or transfer of a Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, the priority of the lien of the Association for assessments over the lien of the First Mortgage shall be determined in accordance with the provisions of the Act, as amended from time to time, including amendments enacted after the date hereof. The personal obligation for delinquent assessments, charges or fees levied hereunder shall not pass to successors in title or interests unless assumed by them, or required by applicable law.

Section 7.11 Certificate of Status Assessments. Upon receipt of a written request from an Owner, the Association, through its Board of Directors or by its Managing Agent, shall issue a written statement setting forth the amount of any unpaid Association assessments, charges, fees, or portions thereof, if any, with respect to the



subject Unit, the amount of the current monthly common expense assessment and the date that such assessment becomes due, and any other information deemed appropriate by the Association. Said written statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

Section 7.12 Mortgagees May Pay Assessments and Cure Defaults. In the event any assessment, or monthly or other installment thereof, on any Unit shall not be paid by the Owner thereof within thirty (30) days after the same is due, or if a default by any Owner of any provision of the Association Documents shall not be cured within thirty (30) days after written notice thereof is given to such Owner, then the Owner or holder of any mortgage or deed of trust encumbering such Unit may (but shall not be required to) pay such assessment or monthly or other installment thereof, together with any other amounts secured by the Association's lien created by this Article VII, and may (but shall not be required to) cure any such default.

Section 7.13 Liens. In accordance with the requirements of the Act, Declarant hereby states that it is possible that additional liens other than mechanic's liens, assessment liens or tax liens may be obtained against the Common Elements.

Section 7.14 Priority of Liens. Notwithstanding anything in this Declaration to the contrary, to the extent permitted by applicable law, any lien of the Association on a Unit for assessments, charges and fees, including without limitation, any default assessment, as well as any monthly or other installments thereof, any of which become due and payable on or after the date of recordation of the First Mortgage on such Unit, shall be subordinate to such First Mortgage. Declaration liens shall not be affected by any sale or transfer of a Unit, except that a sale or transfer of a Unit pursuant to a foreclosure of a First Mortgage shall extinguish a subordinate lien for Association assessments which become payable prior to such sale or transfer. Under no circumstances will a First Mortgagee who obtains title to a Unit pursuant to the remedies in a First Mortgage or a foreclosure be liable for more than six (6) months of the Unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the Unit by the First Mortgagee. Any sale or transfer pursuant to a foreclosure of a First Mortgage shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit so sold or transferred from the lien of any assessments, charges and fees thereafter becoming due.

ARTICLE 8 INSURANCE

Section 8.1 Duty to Obtain and Maintain Insurance. The Association shall obtain and maintain at all times the following types of insurance:

(a) A multi-peril policy with standard extended coverage, special condominium (or its equivalent), inflation guard, agreed amount, and standard all-risk endorsements, including coverage for fire, vandalism and malicious mischief, as well as such other risks and perils as shall customarily be covered with respect to condominium



projects similar in construction, location and use, insuring the Project and all Common Elements, including without limitation all General Common Elements, Limited Common Elements, fixtures (to the extent they are part of the Common Elements), Condominium Building service equipment and supplies, other personal property owned by the Association, all interior and perimeter walls, floors, partitions, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, doors, windows, and other elements or materials comprising a part of the Units, but excluding any betterments and improvements made by Owners and furniture, furnishings or other personal property supplied or installed by an Owner (provided, however, that if any of fixtures, equipment or other property are within a Unit which is to be financed by a mortgage to be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, such fixtures, equipment or other property will be covered under such insurance); said policy shall provide coverage in an amount equal to one hundred percent (100%) of full replacement cost without deduction for depreciation. All policies shall contain a standard noncontributory mortgagee clause in favor of each First Mortgagee of a Unit, which shall provide that any loss thereunder shall be payable to the Association for the use and benefit of First Mortgagees as their interests may appear.

(b) If the Project is located in an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage has been made available under the National Flood Insurance Program (NFIP), or if the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the US Department of Housing and Urban Development otherwise require flood insurance coverage in order for the Project or Units to qualify for such organizations' mortgage or lending programs, a "master" or "blanket" policy of flood insurance on the Condominium Building and any other property covered by the required form of policy (herein "Insurable property") in an amount deemed appropriate.

Any policy of insurance carried by the Association pursuant to this Section 8.1(b) shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

(c) Comprehensive general public liability and property damage insurance for the Project (including without limitation all of the Common Elements, commercial space owned and leased by the Association (as applicable), and public ways of the Project) providing coverage in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, covering claims for bodily injury including death of persons and property damage and arising out of a single occurrence. Coverage shall include, without limitation, liability for bodily injuries, deaths of persons, property damage, operation of automobiles on behalf of the Association and activities in connection with the ownership, operation, maintenance and other use of the Project, legal liability arising out of lawsuits related to employment contracts of the Association, as well as such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.



(d) Workmen's Compensation, employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms as may now or hereafter be required by law.

(e) A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association including, without limitation, any manager hired by the Association.

(f) The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Project, to the extent that such coverage is reasonably available, and shall obtain all insurance as may be required by applicable law. The insured party under all such insurance policies shall be substantially as follows: "1201 Balsam Owners Association, Inc., for the use and benefit of the individual owners (designated by name if required by law)." All policies of insurance carried by or on behalf of the Association shall contain waivers of subrogation (including waivers of subrogation against Owners individually) and waivers of any defense based on invalidity arising from any acts of a member of the Association or based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions, and shall provide that the policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and any First Mortgagee listed as a scheduled holder of a First Mortgage in the policies. The foregoing insurance shall be primary in nature and shall not be prejudiced by any act or neglect of individual Unit Owners which is not in the control of all Owners collectively. The Association shall hold any insurance proceeds in trust for the Owners and First Mortgagees as their interests may appear. Loss payable shall be in favor of the Association, as a trustee, for each Unit Owner and each Owner's First Mortgagee. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. There may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom such Association may enter into any insurance trust agreement or any successor to such trustee. If permitted under applicable law, each Owner hereby appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

(g) All insurance obtained by the Association shall be with generally acceptable insurance carriers. Such insurance carriers shall qualify with or otherwise be acceptable pursuant to the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.

Section 8.2 Insurance Obtained by Owners. Insurance coverage on furnishings, including carpet, draperies, office equipment, office furniture, warehouse equipment and



fixtures, and other items of personal property belonging to an Owner, and public liability coverage within each Unit, shall be the sole and direct responsibility of the Owner(s) thereof, and the Association, its Board of Directors and the Managing Agent of the Association shall have no responsibility therefor. 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 no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such additional insurance carried by any Owner.

Section 8.3 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

Section 8.4 Prohibition of Increase in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of any insurance on the Project, or any part thereof, or increase in the rate of any insurance on the Project, or any part thereof, over what the Association, but for such activity, would pay, without the prior written approval of the Association. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by it, its tenants, employees, guests, invitees or licensees, which is in violation of this Section 8.4. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then after notice and a hearing by the Association, it shall enforce the foregoing indemnity in the same manner as provided in Section 10.2 hereof with respect to an Owner's indemnity against mechanic's liens.

**ARTICLE 9
CONVEYANCES AND TAXATION OF UNITS**

Section 9.1 Unit Description. Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit may legally describe that Unit as follows:

Unit _____ 1201 Balsam Condominiums, County of Boulder, State of Colorado, according to the Condominium Map thereof recorded on _____, _____, at Reception No. _____, and the Declaration recorded on _____, at Reception No. _____, in the records of the Clerk and Recorder of the County of Boulder, State of Colorado, as amended from time to time.

Section 9.2 Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit which legally describes said Unit in the manner set forth in Section 9.1 hereof 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 Common Elements appurtenant thereto and



all other appurtenant properties and property rights, and incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Unit and the use of all the General Common Elements as well as all of the Limited Common Elements appurtenant to said Unit, all as more fully provided in this Declaration.

Section 9.3 Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act, as amended. For the purpose of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in Common Elements appurtenant thereto. The Association shall furnish to the Tax Assessor of the County of Boulder, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

**ARTICLE 10
MECHANIC'S AND OTHER LIENS**

Section 10.1 Mechanic's and Other Liens. No labor performed or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, its agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall indemnify and hold harmless each of the other Owners, and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed or for materials furnished in work on the first Owner's Unit. The Association shall also have a collection lien for any utility charges for utilities to any Unit which are not paid by the Owner of such Unit.

Section 10.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) or other liens are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided for in Section 10.1 hereof by collecting from the Owner of the Unit on which the labor was performed or materials or utilities furnished, the amount necessary to discharge any such mechanic's lien or pay such utility charges, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Unit on which the labor was performed or materials or utilities furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, of the amount to be indemnified, then the failure to so



indemnify shall be a default by such Owner under the provisions of this Section 10.2 and such amount to be indemnified shall automatically become a lien against such Unit, and the Association may proceed to foreclose such lien in accordance with the procedures set forth in Section 7.9 hereof.

Section 10.3 Other Liens. Except for annual, special and default assessment liens as provided in this Declaration, mechanics' liens (except as prohibited herein), tax liens and judgment liens and other liens validly arising by operation of law, there shall be no other liens obtainable against the Common Elements.

**ARTICLE 11
RESTRICTIONS ON USE AND OCCUPANCY**

Subject to the Development Rights and Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Units and to the Common Elements:

Section 11.1 Residential Use. The Project is hereby restricted to residential use and such uses as are related to the convenience and enjoyment of such residential use. No structures of a temporary character or inoperative motor vehicles shall be used or permitted to be kept or stored on any portion of the Property at any time either temporarily or permanently. Notwithstanding the foregoing, any Managing Agent hired by the Association to manage the Project may conduct such management activities from within a Unit.

Section 11.2 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered, constructed in or removed from the Common Elements without the prior written approval of the Board of Directors of the Association.

Section 11.3 Exterior Changes. Except for those improvements erected or installed by Declarant in its construction and completion of the Project, no exterior additions to, alterations or decoration of the Condominium Building, including but not limited to any structural alterations to any Unit or Common Element, nor any changes in walls or other structures, nor installation of window mounted air conditioning units or any exterior television, radio or other communication antennas of any type, shall be commenced, erected, placed or maintained, without the prior written approval of the Board of Directors of the Association, which approval shall be subject to all applicable laws, including federal laws which may govern the installation of communication equipment. Subject to the prior written approval of the Board of Directors of the Association approving the proposed materials to be used, any Owner shall have the right to affix tinting materials on the interior surface of windows located in his Unit.

Section 11.4 Leases. The term "lease", as used herein, shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Unit shall have the right to lease its Unit under the following conditions:



- (a) All leases shall be in writing;
- (b) All leases shall provide that the terms of the lease and lessee's occupancy in the Condominium Building shall be subject in all respects to the provisions of this Declaration and to the provisions of the Association Documents. Any failure by the lessee to comply therewith shall be a default under the lease; and
- (c) No lease shall be for a term of less than six (6) months.

Section 11.5 Nuisances. No nuisance shall be allowed on the Project, nor any use, odor or practice which is the source of annoyance or which interferes with the peaceful enjoyment or possession and proper use by Unit Owners. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the development and construction of the Project. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.

Section 11.6 Walkway & Driveway Easement. Declarant and each Owner and all tenants and licensees of Units and their invitees, licensees, and employees shall have the right to use, free of charge, the entrances, exits, lobby areas, driveways, and walks, in common with all tenants and licensees of Units and their invitees, subtenants and employees. The Association shall have the right to make reasonable Rules and Regulations regarding all parking areas and may elect to institute charges for designated parking areas.

Section 11.7 Rights-of-way. Declarant and Owners and all tenants and licensees of Units and their invitees, subtenants and employees shall have a right-of-way at all times, for motor vehicles and pedestrians, over the portions of the Property designated on the Map and any recorded subdivision plats as driveways or drives. Such rights-of-way shall provide reasonable access to adjacent public streets so as to permit residential use and the development of the Property. The location of such rights-of-way may be varied from time to time by the Declarant, so long as it: (a) owns a portion of the Property; and (b) provides reasonable vehicular access to the parking area, and so long as the same complies with the requirements of the Plat.

Section 11.8 Signage.

(a) All exterior signage on the Property shall be subject to the prior written approval of the Association, which approval may be denied in the Association's absolute and sole discretion, and shall be subject to all applicable restrictions and codes including, without limitation, the Signage Criteria of the Association, as updated from time to time. Such signage shall be fabricated, installed, repaired and maintained by the requesting Owner in a first-class manner. Upon removal, such Owner shall return the



condition of the underlying building to the condition it was in prior to the installation of the signage.

(b) Subject to the Association's rules and regulations, if any, as to size, location, materials and color, each Owner shall have the right to install signage on the door to such Owner's Unit with the occupant's identifying information thereon.

(c) If the Association determines, in the Association's sole and absolute discretion, to install signage in the Common Area lobby of the Condominium Building, then each Owner shall have a right to have the identifying information of the occupant of its Unit on a panel on such signage. The cost to install, repair and maintain such lobby signage shall be a Common Expense.

The common signage on the Property shall be maintained and replaced from time to time, as a common expense of all of the Units. Each Unit Owner shall have the right to the use of any such common sign, and the Association shall have the right of access to such sign. Any and all electricity, maintenance and/or replacement cost of common signage shall be a Common Expense of all Unit Owners.

Section 11.9 Prohibited Commercial Activities. No Owner shall operate or permit the operation upon the Property of any enterprise carrying on any of the below-listed or similar businesses; nor permit the sale upon the Property of the below-listed products:

(a) Any adult book or adult video store (i.e., a store which primarily sells books, magazines, videos or other materials or rents videos or other materials which cannot legally be sold or rented to persons under the age of 18);

(b) Any use which emits an obvious odor, noise, or sound which can be heard or smelled outside any Unit; provided, however, that this provision shall not: (i) prohibit an internal paging system; or (ii) apply to properly maintained and serviced garbage receptacles;

(c) Any use which involves the sale of alcohol without a license; provided, however, that this provision shall not prohibit a business from selling wine, beer or spirits in accordance with a license;

(d) Any central laundry, dry cleaning plant, or laundromat facility that launders, dry cleans or presses clothing or linens for a retail service location other than the building in which such facility is located or for delivery to commercial customer locations;

(e) Any hairdresser, beauty shop, barbershop, or similar business;

(f) Any living quarters, sleeping apartments, or lodging rooms; and

(g) Any mortuary.



Section 11.10 Compliance with Association Documents. Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in this Condominium Declaration, the Articles of Incorporation, the Bylaws of the Association, the Map, any design guidelines, signage criteria and any procedures, rules, regulations or policies adopted under such documents by the Association (the "Association Documents"). The obligations, burdens and benefits of membership in the Association touch and concern the Property and are, and shall be, covenants running with each Unit for the benefit of all other Units and the Common Elements.

Section 11.11 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Units; provided, however that the Owners of each Unit may keep a reasonable number of dogs, cats or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any other Unit Owners or in violation of any applicable laws. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets.

Section 11.12 Vehicular Parking, Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 3/4 ton), self-contained motorized recreational vehicle or other type of recreational vehicle or equipment, may be parked or stored in the Project unless such parking or storage is within the garage area, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery or other commercial vehicles which are necessary for construction or for the maintenance of any portion of the Project.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Project. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein or which is not then currently licensed and registered; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

(c) In the event the Association shall determine that a vehicle is parked or stored in violation of subsections (a) or (b) of this Section, then a written notice



describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Project.

Section 11.13. Trash. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside a Unit nor shall any such items be deposited on a street or alleyway, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage, trash or recycling pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. No such items shall be stored on the roof of a Unit.

Section 11.14. Maintenance. Each Unit shall at all times be kept in a clean and sightly condition. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Unit except as necessary during the period of construction or as provided in Section 11.13.

Section 11.15. Garage Units. Only Residential Unit Owners may own a Garage Unit. No Residential Unit Owner may own more than two (2) Garage Units.

Section 11.16. Residential Units. No Owner may own more than one (1) Residential Unit.

**ARTICLE 12
EASEMENTS**

Section 12.1 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property and all portions thereof, shall be subject to the easements as shown on the Plat, or any portion thereof, and as shown on the recorded Condominium Map. The recording data for recorded easements and licenses appurtenant to or included in the Common Interest Community or to which any portion of the Common Interest Community is or may become subject to by virtue of a reservation in the declaration are listed on the attached Exhibit C.

Section 12.2 Encroachments. In the event that any portion of the Common Elements encroaches upon any Unit(s) or in the event that any portion of an Unit encroaches upon any other Unit(s) or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (a) settling, shifting or movement of the Condominium Building; or (b) construction, reconstruction, alteration



or repair to the Common Elements or the Condominium Building; or (c) repair or restoration of any portion of Condominium Building and/or one or more Units after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one or more of the Units, any Condominium Building or other improvements comprising part of the Common Elements, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other security instruments relating to Units, the actual location of an Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Condominium Map.

Section 12.3 Utility Easements. There is hereby created a general easement upon, across, over, in and under all of the Property (including without limitation all Common Elements) for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electrical and satellite or cable television. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone and television services to erect and maintain the necessary poles and other necessary telephone and television wires, cables, circuits, conduits, equipment and apparatus on, above, across and under the roofs and exterior walls of the Condominium Building. Notwithstanding anything to the contrary contained in this Section 12.3, no water, sewer, gas, telephone, electrical, Satellite television or cable television lines systems or facilities may be installed or relocated on the Property except as approved by the Association. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, until the end of the Declarant Control Period, the Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms hereof. The Association may grant such other utility easements upon, across, over, in and under the Common Elements as reasonably necessary for the ongoing development and operation of the Project.

Section 12.4 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon all streets and upon the Common Elements in the proper performance of their duties.

Section 12.5 Maintenance Easement. An easement is hereby granted to the Association, their officers, agents, employees and assigns upon, across, over, in and under



the Common Elements and right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.

Section 12.6 Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under any portion of the Property for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

Section 12.7 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within Units or may be conveniently accessible only through Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements located therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Elements or to any Unit. The Association shall also have such right, independent of any agency relationship. In addition, the Association shall have the right to enter upon the Units and Limited Common Elements to effect emergency repairs to the Project or Common Elements, and a right to reasonably enter to effect other repairs, improvements, replacement or maintenance deemed necessary. Subject to the provisions of Section 6.6 hereof, damage to the interior of any part of an Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repairs within any Unit at the instance of the Association or any Owner, shall be an expense of all the Owners. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours notice to the occupants of the Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. Emergency repairs may be made at any time, and in emergency situations the occupants of the affected Unit be warned of impending entry an early as is reasonably possible.

Section 12.8 Easements Deemed Created. All conveyances of Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article XII, even though no specific reference to such easement or to this Article XII appears in the instrument of such conveyance.

ARTICLE 13

DAMAGE, DESTRUCTION, OBSOLESCENCE OR CONDEMNATION

Section 13.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any Units, the Condominium Building, Common



Elements or other portions of the Property which have been destroyed, damaged, condemned or become obsolete. Title to any 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 as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation, as is hereinafter provided. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event to appoint a new attorney-in-fact to deal with the Project upon its construction, damage, obsolescence or condemnation.

Section 13.2 Damage or Destruction. "Repair and reconstruction" of the improvements, as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan, scheme and specifications, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration and replacement, in accordance with the provisions hereinafter set forth:

(a) Notwithstanding the provisions of Article XV hereof relating to the percentage required for consent or approval of Owners and First Mortgagees, in the event of damage or destruction due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or reconstruct the improvement(s), shall be applied by the Association as attorney-in-fact, to such repair and reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and construction.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), 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 which, notwithstanding anything to the contrary contained in Section 7.6 hereof, shall be made without a vote of the Owners against all of the Owners; and their Units. Such special assessment shall be assessed in accordance with the provisions of Section 7.6 hereof, and shall be due and payable not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as



attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s), using all of the insurance proceeds for such purpose, notwithstanding failure of an Owner to pay the aforesaid special assessment. The special assessment provided for herein shall be a debt of each Owner and a lien on his Unit, and may be enforced and collected as provided in Section 7.9 hereof, including the provisions therein pertaining to the payment of interest, late charges, costs, attorneys' fees and expenses. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

Section 13.3 Obsolescence. The Owners holding an aggregate of sixty-seven percent (67%) or more of the total voting interest in the Association may agree that all or portions of the Common Elements are obsolete and adopt a written plan for the renewal and reconstruction thereof. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the Office of the Clerk and Recorder of Boulder County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as a Common Expense.

Section 13.4 Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 13.4 shall apply:

(a) All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association, or any trustee, or be held in trust for Owners and their First Mortgagees as their interests may appear.

(b) The Association will represent the Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof, by the condemning authority, and, if permitted under applicable law, each Owner appoints the Association as attorney-in-fact for such purpose. A trustee may be appointed to act on behalf of the Owners in carrying out the above functions in lieu of the Association.

(c) In the event that the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board of Directors of the Association. The Association shall, as soon as practicable, determine the share of the Condominium Award to which each Owner is entitled.

(d) Subject to the provisions of Article XV hereof, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. The Association shall allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts to be allocated among the Owners as



follows: (a) the total amount allocated to taking of or injury to the General Common Elements appurtenant to each Unit; (b) the total amount allocated to severance damages shall be apportioned among the Owners on the basis of the undivided interest in the Common Elements appurtenant to each Unit; (c) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (d) the respective amounts allocated to the taking of or damage to a particular Unit, including but not limited to the Limited Common Elements appurtenant thereto, and to the improvements an Owner has made within its Unit, shall be apportioned to the particular Unit involved; and (e) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Unit shall be based on the comparative values of the affected Units as they existed immediately prior to the condemnation.

(e) Subject to the provisions of Article XV hereof relating to the percentages required for approval or consent of Owners, First Mortgagees and insurers and guarantors of First Mortgages, if applicable, in the event a partial taking results in the taking of a complete Unit, the Owner(s) thereof shall automatically cease to be member(s) of the Association, shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio in accordance with this Declaration according to the principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Units for amendment of this Declaration as provided in Article XIV hereof.

(f) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures of Section 13.2 hereof.

**ARTICLE 14
AMENDMENT OF DECLARATION**

Section 14.1 Amendment. Except for those matters governed by Section 15(1)(a) hereof, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by instrument approved in writing by not less than sixty-seven percent (67%) of the members; provided, however, that until: (a) conveyance of the last Unit by Declarant to the first Owner thereof (other than Declarant), or (b) ten (10) years from the date upon which this Declaration is recorded in the records of the office of the Clerk and Recorder of the County of Boulder, Colorado, whichever shall first occur, any amendment of Section 5.3 and 14.2 shall require the prior written approval of the Declarant.

Section 14.2 Amendment by Declarant. Notwithstanding the provisions of Section 14.1, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be



necessary in order for existing or future mortgages to be acceptable to, or for existing or future mortgages to comply with the requirements, standards or guidelines of, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the US Department of Housing and Urban Development, the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration or any other similar governmental or quasi-governmental agency or secondary mortgage market purchaser, then, subject to this Section 14.2, Declarant shall have and hereby specifically reserves the right and power to unilaterally make and execute any such amendments without obtaining the approval of any Owners or First Mortgages. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws of the Association shall be made, if at all, by Declarant prior to: (a) conveyance of the last Unit by Declarant to the first Owner thereof (other than Declarant); or (b) ten (10) years from the date upon which this Declaration is recorded in the records of the office of the Clerk and Recorder of the County of Boulder, Colorado, whichever shall first occur.

Section 14.3 Technical Corrections by Declarant. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration at any time prior to the termination of its right to appoint the Board of Directors of the Association for the purposes of correcting spelling, grammar, dates or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.

Section 14.4 Technical Corrections by Board of Directors. The Association, through its Board of Directors, is hereby granted the right and power to record technical corrections to the Declaration (and all Amendments to the Declaration). Such technical corrections become effective after approval by the Board of Directors and upon recording at the office of the Clerk and Recorder and do not require Mortgagee or member approval. Technical corrections are not amendments and shall not be construed as such.

Section 14.5 Recording of Amendments. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the County of Boulder, Colorado, and must contain evidence of approval thereof showing the notarized signatures of all the appropriate parties.

**ARTICLE 15
FIRST MORTGAGEES**

Section 15.1 Member and First Mortgagee Approval. Subject to Sections 15.2 hereof, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

(a) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the Association members and approval in accordance with the Act from sixty-seven percent (67%) of the First Mortgagees of Units:

(i) seek to abandon or terminate the Project or condominium regime, whether by act or omission;



(ii) change the pro rata interest or obligations of any individual Unit for the purpose of:

(A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(B) determining the pro rata share of ownership of each Unit in the Common Elements;

(C) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes reasonably necessary or useful for the proper maintenance or operation of the Project);

(D) partition or subdivision of any Unit; or

(E) use hazard insurance proceeds for losses to any condominium property (whether to Units or Common Elements) for other than the repair, replacement or reconstruction of such condominium property in accordance with the procedures set forth in Section 13.2 hereof, except as may be provided by statute in the case of substantial loss to such Units and/or Common Elements.

(b) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the Association members, and approval in accordance with the Act from fifty-one percent (51%) of the First Mortgagees of Units;

(i) add or amend any material provisions of this Declaration, or other of the Association Documents, which establish, provide for, govern or regulate any of the following (provided that such additions or amendments shall not be considered amendments or material if they are for the purpose of correcting technical errors or for clarification only):

(A) voting rights;

(B) assessments, assessment liens or priority or subordination of such liens;

(C) reserves for maintenance, repair and replacement of those elements of the Common Elements which must be maintained, repaired or replaced on a periodic basis;

(D) insurance, including but not limited to fidelity bonds;

(E) reallocation of interests in or rights to use of the Common Elements;



(F) responsibility for maintenance and repair of any portion of the Project;

(G) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

(H) boundaries of any Unit;

(I) the interests in the General Common Elements or Limited Common Elements;

(J) convertibility of Units into Common Elements or of Common Elements into Units;

(K) leasing of Units;

(L) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey its Unit;

(M) any provisions in any of the Association Documents which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or

(ii) effectuate any decision to terminate professional management and assume self-management of the Association, when professional management has previously been required by any First Mortgagee or any insurer or guarantor of a First Mortgage;

(c) unless it has obtained the prior approval in accordance with the Act of at least fifty-one percent (51%) of the First Mortgagees of Units:

(i) restore or repair the Project, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Project and the construction of improvements thereon;

(ii) terminate the legal status of the Project or otherwise terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the Project;

(iii) make any modifications to the Association Documents of a material adverse nature to First Mortgagees; or



(iv) reallocate interests in the Common Elements resulting from a partial condemnation or partial destruction of the Project unless the formula for such reallocation is fixed in advance by the Declaration or by applicable law.

Section 15.2 Notice of Action. A First Mortgagee or insurer or guarantor of a First Mortgage, upon written request to the Association (such request to state the name and address of such First Mortgagee, insurer or guarantor and the Unit number), shall be entitled to timely written notice of:

(a) any condemnation loss or casualty loss which affects a material portion of the Project or any Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

(b) any lapse, cancellation or material modification or any insurance policy or fidelity bond maintained by the Association;

(c) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article XV or elsewhere in this Declaration;

(d) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or of any default by such Owner in any obligation under the Association Documents if the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

(e) any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the General Common Elements or Limited Common Elements appertaining to any Unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any Unit or (iv) the purposes to which any Unit or the Common Elements are restricted; or

(f) any proposed termination of the condominium regime.

Section 15.3 Association Books and Records. The Association shall make available to Owners, First Mortgagees of Units and insurers or guarantors of any such First Mortgage, current copies of this Declaration, and the Articles of Incorporation, Bylaws, Rules and Regulations, books, records and financial statements of the Association. The Association shall make available to prospective purchasers of Units current copies of this Declaration, and the Articles of Incorporation, Bylaws, Rules and Regulations and the most recent annual audited financial statement, if such is prepared, of the Association. "Available" shall mean available for inspection, upon request, during normal business hours and under other reasonable circumstances. Upon written request of any agency or corporation which has an interest or prospective interest in any Unit or



the Project, including without limitation a First Mortgagee or insurer or guarantor of a First Mortgage, the Association shall prepare and furnish to such agency or corporation within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

Section 15.4 Consent to Amendments. Any First Mortgagee who receives a written request (via certified or registered mail, "return receipt requested") to approve any material or non-material additions or amendments who does not deliver or post, by registered or certified mail, "return receipt requested", to the requesting party a negative response within sixty (60) days of receipt shall be deemed to have approved such request; provided that any First Mortgagee shall have any right to approve that is provided by the Act if such period of time is longer than the aforementioned sixty (60) days.

**ARTICLE 16
ACKNOWLEDGMENTS**

Section 16.1 Acknowledgements. Each Owner is hereby advised of the following matters affecting the Property and the Owners' use and enjoyment thereof:

16.1.2 The Condominium Building is not a new building as of the establishment of this Common Interest Community.

16.1.3 Substantial remodel and construction-related activities relating to the development of Units or buildings or other development within or near the Project may cause considerable noise, dust and other inconveniences to the Owners.

**ARTICLE 17
MISCELLANEOUS**

Section 17.1 Period of Condominium Ownership. The condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration is terminated in any manner provided in this Declaration.

Section 17.2 Supplement to Condominium Ownership Act. The provisions of this Declaration shall be in addition and supplemental to the Act, as it may be amended from time to time, and to all other applicable provisions of law. In the event this Declaration conflicts with the Act, the Act, as amended from time to time, shall control.

Section 17.3 Conveyance of Condominium Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

Section 17.4 Enforcement. Enforcement of these covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions



contained in this Declaration, the Articles of Incorporation or Bylaws of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision, to enjoin or restrain such violation or citation and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings; in any such action the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto.

Section 17.5 Registration of Mailing Address. All Owners of an individual Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands and all other communications regarding Association matters. An Owner or Owners shall notify the Secretary of his or their (a) registered address within five (5) days after any transfer of title or change of address, and (b) "voting member" within five (5) days after any transfer of title or designation thereof. Such notice shall be written and signed by all of the Owners to which it relates or by such persons authorized to sign on behalf of such Owners. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit. If no address is registered or, if all of the Owners cannot agree, then the address on the deed for the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

All notices and demands intended to be served upon the Board of Directors shall be sent to the following address or such other address as the Board of Directors may designate from time to time by notice to all of the Owners:

Board of Directors
1201 BALSAM OWNERS ASSOCIATION, INC.
c/o 1201 Balsam Manager, LLC
Attn: Scott A. Holton, Manager
1201 Balsam Street
Boulder, CO 80302

All notices given in accordance with this Section shall be sent by personal delivery which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit delivery charges prepaid, with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three business days after deposit in the U.S. mail.

Section 17.6 Non-Waiver. Failure by the Declarant, the Association, any Owner, First Mortgagee, or other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 17.7 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder



2967310

Page: 41 of 46
12/03/2008 02:08P
D 0.00

Boulder County Clerk, CO CONDO DEC R 231.00

of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

Section 17.8 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 17.9 Captions. The captions of the Articles and Sections are included solely for convenience and reference, and shall have no significance in the interpretation of this document.

Section 17.10 Conflicts in Documents. In the event there shall be any conflict between the provisions of this Declaration and the Articles or any Bylaw or Rules and Regulations of the Association, the provisions of this Declaration shall be controlling.

Section 17.11 Special Declarant Rights. If any right reserved herein by Declarant for the benefit of Declarant is a "development right" or a "special declarant right" as such terms are used in the Act, then such right shall expire ten (10) years from the date this Declaration is recorded.

Section 17.12 Rights of Action. The Association and any aggrieved Owner shall be granted a right of action against other Owners for failure to comply with the provisions of the Association Documents, or with the decisions of the Association which are made pursuant to authority granted the Association in such documents. Owners shall have similar rights of action against the Association.



2967310

Page: 42 of 46
12/03/2008 02:08P
D 0.00

Boulder County Clerk, CO CONDO DEC R 231.00

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set their hands this 3rd day of ~~November~~, 2008.

DECLARANT: December

1201 Balsam, LLC,
a Colorado limited liability company

By: 1201 Balsam Manager, LLC,
a Colorado limited liability company, its
Manager

Scott A. Holton, its Manager

STATE OF Colorado)

COUNTY OF Boulder)

~~November~~ The foregoing Declaration was acknowledged before me this 3rd day of ~~November~~, 2008, by Scott A. Holton, as Manager of 1201 Balsam Manager, LLC, a Colorado limited liability company, as Manager of 1201 Balsam, LLC, a Colorado limited liability company, Declarant.

Witness my hand and official seal.
My commission expires: 4/23/2012

[SEAL]

Notary Public

MY COMMISSION EXPIRES 4/23/2012



2967310

Page: 43 of 46
12/03/2008 02:08P

Boulder County Clerk, CO CONDO DEC R 231.00 D 0.00

JOINDER OF LENDER

Mile High, a banking institution ("Lender"), being the beneficiary of the Deeds of Trust recorded April 4, 2008 at Reception # 2920896, in the records of the Boulder County Clerk and Recorder (the "Deed of Trust"), for itself and its successors and assigns, approves the foregoing Declaration for 1201 Balsam Owners Association, Inc., affecting a portion of the property encumbered by the Deed of Trust, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by that Declaration.

LENDER:

Mile High Bank

By: [Signature]
Name: Todd A. Peyok
Title: President - Boulder

STATE OF Colorado)
)
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 3rd day of December, 2008, by Todd A. Peyok, as President of Mile High Bank Lender.

Witness my hand and official seal.
My commission expires: 4/23/2012

[SEAL]

J. MARTINEZ
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES 4/23/2012

[Signature]
Notary Public



2967310

Page: 44 of 46

12/03/2008 02:08P

Boulder County Clerk, CO CONDO DEC R 231.00

D 0.00

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT

THAT PART OF LOT 44, JOS. WOLFF'S SUBDIVISION, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 44; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID LOT, A DISTANCE OF 125 FEET; THENCE NORTHERLY AND PARALLEL WITH THE WEST LINE OF SAID LOT, A DISTANCE OF 98.25 FEET; THENCE WESTERLY AND PARALLEL WITH THE SOUTH LINE OF SAID LOT, A DISTANCE OF 125 FEET TO THE WEST LINE OF SAID LOT; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT, A DISTANCE OF 98.25 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO THE CITY OF BOULDER IN DEED RECORDED SEPTEMBER 9, 1993 AT RECEPTION NO. 1335564.

AND

THAT PART OF LOT 6, CARLSON'S SUBDIVISION, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 6 AND RUNNING THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 6, A DISTANCE OF 96 FEET; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 6 TO THE EAST LINE OF SAID LOT 6; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 6 TO THE NORTHEAST CORNER OF SAID LOT 6; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 6 TO THE NORTHWEST CORNER OF SAID LOT 6 TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.



2967310

Page: 45 of 46
12/03/2008 02:08P

Boulder County Clerk, CO CONDO DEC R 231.00 D 0.00

EXHIBIT B

ALLOCATED INTEREST

<u>Unit</u>	<u>Sq. Ft.</u>	<u>Percentage</u>
101	787	5.70%
102	703	5.09%
103	662	4.79%
104	792	5.73%
201	787	5.70%
202	703	5.09%
203	662	4.79%
204	792	5.73%
205	719	5.20%
206	439	3.18%
301	809	5.86%
302	729	5.28%
303	686	4.97%
304	811	5.87%
305	741	5.36%
306	452	3.27%
G1	182	1.32%
G2	182	1.32%
G3	179	1.30%
G4	180	1.30%
G5	180	1.30%
G6	188	1.36%
G7	183	1.32%
G8	180	1.30%
G9	180	1.30%
G10	180	1.30%
G11	181	1.31%
G12	180	1.30%
G13	188	1.36%
G14	179	1.30%
Total:	13,816	100%



2967310

Page: 46 of 46
12/03/2008 02:08P
D 0.00

Boulder County Clerk, CO CONDO DEC R 231.00

EXHIBIT C

EXCEPTIONS TO TITLE

1. Taxes and assessment for the year 2008 and subsequent year.
2. Grant of easement as described in instrument recorded September 9, 1993 under reception number 1335563.
3. Reservations of right of way as set forth in instruments recorded May 4, 1954 in book 950 at pages 17 and 18.
4. Easements, conditions, covenants, restrictions, reservations and notes on the Plat of Carlson's subdivision , a resubdivision of lots 41, 42, 43 and 44, Jos. Wolff's subdivision recorded March 18, 1948 under reception number 490554.
5. Grant of easement in favor of the City of Boulder granted on October 9, 2008 and to be recorded by the City of Boulder.