

David Caldwell  
Heritage Property and HOA Management  
2650 North Ave., Suite 116  
Grand Junction, CO 81501

August 1, 2015

Dear David:

In accordance with Section 4.3 of the Declaration of Covenants, Conditions and Restrictions for the Vistas at Tiara Rado Condominiums (VTRC), I do hereby voluntarily relinquish control of the Association Board effective immediately. It is understood that the HOA has authority to preside over the affairs of the 3 buildings (6 units) currently described in the plat of the Vistas at Tiara Rado Condominiums Phase 1 (as originally recorded in 2012 and subsequently revised in either December 2014 or January 2015).

The buildings contained in Outlots A and B will continue to be excluded from participation in the HOA until such time as the VTRC plat is updated to include either or both of these buildings (following a transfer of any of the underlying interests FROM Hatch Investments, LLC).

Thank you for your assistance in this matter and please contact me with any questions.



R. Curt Hatch  
(970) 201-9436

33 PAGE DOCUMENT

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VISTAS AT TIARA RADO CONDOMINIUMS**

This Declaration of Covenants, Conditions and Restrictions for Vistas at Tiara Rado Condominiums (Declaration) is made and declared this 5<sup>th</sup> day of NOVEMBER, 2012, by Hatch Investments LLC, a Colorado limited liability company (the "Declarant").

**RECITALS**

A. The real property situate in Mesa County, Colorado, subject to this Declaration is described as follows:

<u>Legal Description</u>	<u>Owner</u>
Lot 1 of the Hatch Subdivision, Mesa County, Colorado	Hatch Investments LLC, a Colorado limited liability company

(the "Property").

B. Declarant desires to provide for condominium ownership of the Property and to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act, section 38-33.3-101, *et seq.*, C.R.S. (the "Act"), the name of which is Vistas at Tiara Rado Condominiums.

C. Each condominium unit, including each condominium unit's identifying number, is depicted on the map for Vistas at Tiara Rado Condominiums, recorded in the records of the Mesa County Clerk and Recorder, incorporated herein by reference. The term "Project" shall collectively mean the Property and all buildings and other improvements located or to be located on the Property. The condominium ownership of the Project will permit ownership in fee simple of individual air spaces and co-ownership with others, as tenants in common, of Common Elements, as herein defined.

Therefore, Declarant declares that the Vistas at Tiara Rado Condominiums shall be held and conveyed subject to the following covenants, restrictions and easements under a general plan of improvement and condominium ownership for the benefit of each and all of the included condominium units and of the common areas and of the future owners of those units and those common areas, which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right title or interest in all or any part of the Vistas at Tiara Rado Condominiums. Declarant submits the Vistas at Tiara Rado Condominiums to the provisions of the Act.

**ARTICLE I**  
**DEFINITIONS**

- 1.1 "Allocated Interests" means the common expense liability and the ownership interest and votes in the Association as set forth in Sections 2.4, 4.4, 5.2 and 7.1 of this Declaration.
- 1.2 "Articles" means the Articles of Incorporation of the Association.
- 1.3 "Association" means the Vistas at Tiara Rado Condominium Association, Inc., a Colorado nonprofit corporation.
- 1.4 "Association Documents" means this Declaration, the Map, the Articles, the Bylaws and any procedures, rules, regulations, or policies adopted by the Association, and any amendments thereto.
- 1.5 "Board" means the Board of Directors of the Association.
- 1.6 "Buildings" means any building, including all fixtures and improvements thereto, situate on the Property.
- 1.7 "Bylaws" means the Bylaws of the Association.
- 1.8 "Common Elements" means all portions of the Property except the Units and except those parcels identified as Outlot A and Outlot B on the Map. Common Elements consist of General Common Elements and Limited Common Elements.
- 1.8.1 "General Common Elements" means all Common Elements except Limited Common Elements.
- 1.8.2 "Limited Common Elements" means those parts of the Common Elements which are either limited or reserved in this Declaration, on the Map, or by action of the Association, for the exclusive use of an Owner of a Unit or are limited to and reserved for the use of less than all Owners.
- 1.9 "Common Expenses" means those expenses of the Association described in Section 5.2.1.
- 1.10 "Declarant" means Hatch Investments LLC, a Colorado limited liability company.
- 1.11 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and any amendments or supplements thereto.
- 1.12 "Expansion Property" means those parcels identified as Outlot A, Outlot B and Outlot C on the Map, and Lot 2 of the Hatch Subdivision, Mesa County, Colorado.

1.13 "First Security Interest" means a Security Interest that has priority of record over all other recorded liens except those liens made superior by statute.

1.14 "Improvements" means any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, irrigation facilities, such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Property.

1.15 "Map" means that certain condominium map or maps of the Property to be recorded in the Mesa County Clerk and Recorder's official records.

1.16 "Member" means a person or entity who is a member of the Association.

1.17 "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.18 "Person" means any natural person, corporation, limited liability company, partnership, association, or any other entity or combination thereof.

1.19 "Security Interest" means an interest in real estate or personal property in the Property, or any portion thereof, created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 5.11 hereof and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 hereof, Security Interest shall also mean and refer to any executory land sales contract wherein the administrator of Veterans Affairs, an officer of the United States of America is the seller, whether such contract is recorded or not, and whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignees, or a remote assignee, and the land records in the office of the Clerk and Recorder of the County of Mesa, Colorado, show the administrator as having the record title to the Unit.

1.20 "Security Interest Holder" means any person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest.

1.21 "Unit" means an individual air space bounded by and contained within the perimeter doors, windows and the unfinished surfaces of the perimeter walls, floors and ceilings as shown and numbered on the Map together with all fixtures and improvements therein contained. Any indication on the Map to the contrary notwithstanding, the following are not part of a Unit: improvements and services used by more than one Unit. Each Unit and its identifying number is

reflected on the attached Exhibit A and the Map. No additional Units will be created by Declarant except as otherwise provided in this Declaration. The maximum number of Units shall be forty-two (42), including any Units which may be incorporated through the integration of the Expansion Property.

**ARTICLE 2**  
**GENERAL DECLARATION**

2.1 **Intent.** By making the Declaration hereunder, Declarant specifically intend to enhance, perfect and preserve the value, desirability and attractiveness of the Property and, to provide for the maintenance of the Common Elements, the Improvements and the Buildings thereon in a manner beneficial to all Owners. By this Declaration, Declarant expressly intends and does hereby subject the Property to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Property, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

2.2 **Owners' Estates and Rights to Common Elements.** The Project is divided into Units. Each Owner of a Unit shall be entitled to the exclusive ownership and possession thereof and title to a Unit may be held or owned by any Person in any manner in which title to other real property may be held or owned in the State of Colorado, including, without limitation, joint tenancy or tenancy in common. Ownership of each Unit carries a separate undivided interest in the Common Elements. Such undivided interest in the Common Elements shall be appurtenant to and shall pass with the title to every Unit subject to the provisions of this Declaration and the Articles and Bylaws of the Association. Any Owner may delegate his or her right of enjoyment to the Common Elements and facilities for the members of his or her family, his or her tenants, or contract purchasers who reside on the Property. The Owners may not convey any Common Elements to any person or entity other than a successor in interest to the Owners' Units.

2.3 **Limited Common Elements.** A portion of the Common Elements is set aside as Limited Common Elements for the exclusive use, management, control, operation, maintenance, repair and improvement by one or more, but less than all, of the individual Owners, as shall be designated on the Map for use by the Unit or Units.

2.4 Allocation of Allocated Interests. Each Unit shall be allocated an interest in the General Common Elements equal to a fraction with one (1) as the numerator and the total number of Units as the denominator and shall be responsible for a share of all assessments as provided for in Article 5 of this Declaration.

**ARTICLE 3**  
**RESTRICTIONS ON USE**

3.1 Building Restrictions. The Owners may make any improvements or alterations to their respective Units that do not impair the structural integrity, electrical systems or mechanical systems, or affect the support of any Common Element. No improvement or alteration shall be constructed without the prior written approval of the Association. The Association's approval or disapproval must be provided within thirty (30) days of submittal of the Owner's plans and specifications. In the event the Association fails to approve or disapprove within thirty (30) days after sufficient plans and specifications have been submitted to it, approval shall be deemed given. A majority vote of the Board, or a committee appointed by the Board for this purpose, is required for approval or denial of all proposed improvements.

3.1.1 No structure of a temporary character, trailer, teepee, tent, shack, garage, barn or other outbuilding shall be used on the Project as a residence, either temporarily or permanently.

3.1.2 An Owner shall not change, modify, paint, decorate, alter or in any way make any change to any exterior wall, surface, roof, entry, landscaping, paving, trees, shrubbery or other Improvements without the approval of the Association.

3.2 Maintenance of Units, Buildings, Improvements, and General Common Elements.

3.2.1 The Owners, at their sole expense, shall keep, maintain and repair all portions of their Units and the Limited Common Elements allocated to their Units in a neat, clean, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration. If a Limited Common Element is allocated to more than one Unit, the obligations set forth in this subparagraph shall be the joint responsibility of the Owners of all the Units to which the Limited Common Element is allocated. In the event the Owners fail to keep, maintain or repair their Units or allocated Limited Common Elements in accordance herewith, the Association shall conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner(s) on whose Unit the maintenance or repairs were conducted as a reimbursement assessment pursuant to Section 5.4 hereof.

3.2.2 The Owners shall not paint or otherwise decorate or change the appearance of any portion of the Buildings not within the Unit, unless the written consent of the Association is obtained. The Owners shall promptly report to the Association or its agent

any defect or need for repairs or maintenance, the responsibility for remedying of which is with the Association. The Owners shall not make any alterations in the portions of the Unit or the Buildings which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Buildings without first obtaining the written consent of the Association.

3.2.3 The Association shall keep, maintain and repair the General Common Elements in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration.

3.2.4 The General Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided. By the acceptance of his or her deed or other instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the General Common Elements. Each Owner agrees not to institute any such action. Furthermore, each Owner agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the complying Owners to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the complying Owners incur in connection therewith.

3.2.5 Each Owner shall be entitled to exclusive ownership of his or her Unit. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

3.2.6 No Unit shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate in any Unit or the Common Elements. All garbage, rubbish and trash shall be disposed of in appropriate trash receptacles and shielded from view.

### 3.3 Restrictions on Occupants and Pets.

3.3.1 At no time shall any Unit be occupied by more than one family.

3.3.2 No animals shall be allowed other than domestic pets. Not more than two (2) pets in cumulative total shall be kept in any Unit or any associated Limited Common Element and only then if they are kept solely as household pets for private use and not for commercial purposes. No more than 1 of these pets may be a dog, and any dogs must be less than 100 pounds when fully grown. No such animal may be kept which is a nuisance or annoyance to other Owners. Household pets shall be contained in their Owner's Unit or on a leash and not permitted to run loose. At the request of any Owner, the Board

2 pets  
dog

shall determine whether a particular animal shall be considered a household pet, a nuisance, or whether the number of any such animals in any Unit is in compliance. Habitually barking and vicious dogs are prohibited, at the sole discretion of the Association. No horses, livestock, pigs, pot belly pigs, or ferrets of any type shall be kept in any Unit or in any Common Element. Household pets shall be under the control of their owners at all times and their Owners shall immediately clean all animal waste generated from the household pets.

3.3.3 No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Property.

3.4 Rental of Units. All tenants or future tenants are subject to the covenants, conditions and restrictions of the Declaration. The mere rental of any Unit or the mere act of occupancy of any Unit shall signify that the covenants, conditions and restrictions set forth in this Declaration are accepted by such tenants. The Units shall not be rented by the Owners for transient or hotel purposes, which shall be defined as: (a) rental for a period less than thirty (30) days; or (b) any rental if the occupants of the Unit are provided customary hotel services. Other than the foregoing obligations and restrictions, the Owners shall have the absolute right to lease the Units, provided that the lease is made subject to the covenants, conditions and restrictions set forth in this Declaration.

3.5 Fences. No fence shall be erected on the Project without the approval of the Association.

3.6 Home Occupations. No Unit, Building or Common Element may be used for commercial purposes of any type whatsoever excepting for home occupations as permitted by the City of Grand Junction or other governing entity. For purposes of this section, "home occupations" shall mean an occupation by the resident conducted entirely within a Unit which does not entail the employment of third persons on the premises, does not entail the delivery of goods or services to customers upon the premises, and does not entail visits by customers to the premises. For example, but not by limitation, an insurance agent may use his or her Unit as a personal office so long as his or her customers are not permitted to come to the Unit; however, the establishment of a barber shop or a beauty shop would be prohibited.

3.7 Easement for Maintenance and Entry. Each Owner shall afford to the Association and the other Owners in the same building, and to their agents or employees, access through such Owner's Unit reasonably necessary for maintenance, repair and replacement of any Limited Common Elements and any other property or Improvements maintained, repaired or replaced by the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the General Common Elements, any other property, or any Unit, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. Further, each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair



and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible.

**3.8 Owner's Negligence.** Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, any other property, a Unit, or any Improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of Article 5 of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

**3.9 Miscellaneous.**

3.9.1 All facilities for permanent utilities service shall be kept or maintained underground, or in the original condition at such time the Units are first conveyed to the Owner by Declarant.

3.9.2 No antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained out of doors, except as may be approved in advance by the Association.

**3.10 Utilities.** There is hereby created a blanket easement upon, across, over and under the Common Elements for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms

hereof; provided, however, that such right and authority shall cease and terminate upon the earlier of five (5) years after the first Unit is conveyed to an Owner other than Declarant or conveyance by Declarant of the last Unit to the first Owner thereof (other than Declarant), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

3.11 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents and contractors of improvements, structures or signs necessary or convenient to the development, sale, operation or other disposition of the Units or Improvements situate within the Project, provided that this exemption shall not be interpreted to impose limitations on the power of the Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

#### ARTICLE 4 THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

4.1 Purpose and Membership. By acceptance of a deed to a Unit, each Owner shall be a Member of the Association organized for the general purpose of being and constituting an entity for the furtherance of the mutual interests of the Owners of the Property pursuant to this Declaration and the Articles and Bylaws, including without limitation, enforcement of the Declaration; owning, repairing and maintaining the Common Elements; maintenance and use of any Units, Buildings and Improvements; levying and enforcing assessments to defray the cost and expenses of operation; and, providing other utilities and services pursuant to the Articles and Bylaws. The Condominiums are subject to the Colorado Common Interest Ownership Act. The business of the Association will be conducted according to the Act.

4.2 Directors of the Association. The affairs of this Association shall be managed by a board of at least three (3) directors (the "Board"). Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

4.3 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Board and officers of the Association to the fullest extent permitted under the Act, except as limited in the Articles and Bylaws. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove directors and officers are set out in the Articles and Bylaws. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

The period of Declarant control shall terminate no later than the later of sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than the Declarant, or one (1) year after the closing of the sale of the first Unit to an Owner other than Declarant. Notwithstanding the foregoing, the period of Declarant control shall terminate on the earlier of two years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Units was last exercised.

**4.4 Voting Rights.**

4.4.1 Association membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

4.4.2 The Association shall have one class of voting membership, and there shall be one vote for each Unit in any matter subject to a vote of the Members. Each Unit's vote may be cast as the Owners determine, but in no event shall more than one vote be cast with respect to any Unit.

**4.5 Limitation Upon Liability.**

4.5.1 Indemnification of Officers and Board Members. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action of for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

4.5.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Project the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Project or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

**4.6 Meetings of the Members.**

**4.6.1 Bylaws.** Except as otherwise provided in this Declaration, meetings of the Members shall be governed by the procedures set forth in the Bylaws, which, at a minimum, require approval by at least a majority of the votes entitled to be cast by the Members in person or by proxy at which a quorum is present, or in writing by a by Members entitled to cast at least a majority of the total authorized votes of all Members.

**4.6.2 Meetings to Approve Certain Actions.** Any meetings of the Members to approve actions described in Sections 11.1.1, 11.1.2 or 11.2, amendments to this Declaration which require a vote of the Members pursuant to Section 13, or capital expenditures by the Association (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget, are subject to the following provisions: (i) at least 25 days advance notice to all Members is required; (ii) the notice shall state the purpose of the meeting and contains a summary of the actions proposed; (iii) the notice includes a proxy that can be cast in lieu of attendance at the meeting. The quorum is twenty five percent (25%) of the total number of votes, except that: (a) any amendment of this Declaration pursuant to Section 13.3 that is subject to a vote of the Members requires an affirmative vote of at least sixty seven percent (67%) of the Members; (b) termination of this Declaration, dissolution of the Association (except pursuant to a consolidation or merger) and conveyance of all common areas requires an affirmative vote of at least sixty seven percent (67%) of the Members and at least a majority of all of the authorized entitled to be cast be Members other than the Declarant; and (c) and any amendment described in this Section 4.6.2 that changes the rights of any specific class of Members must be approved by at least fifty one percent (51%) of the total authorized votes of all Members of such class.

**4.7 FHA or VA Approval.** During the period of Declarant control, any material amendment or extraordinary action (for example, those actions described in Sections 11.1.1, 11.1.2 or 11.2) must be approved by the VA or FHA to the extent that the VA or FHA has guaranteed any loans secured by Units, as required by law.

**4.8 Ownership and Maintenance.**

**4.8.1** The maintenance, repair and restoration of the General Common Elements, together with Improvements thereon, including, but not limited to, irrigation facilities and drainage and detention facilities, shall be solely vested in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing and restoring the General Common Elements and Improvements thereon shall be borne by the Owners as a regular assessment as provided in Section 5.2, hereof.

4.8.2 The Association shall further be charged with the maintenance, repair and restoration to any Improvement situate on any Limited Common Element or Unit provided the Owner thereof fails to repair, restore or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Section 5.4, hereof.

4.9 Duty of Association. The Association shall have the duty of maintaining and repairing all of the General Common Elements within the Project. The cost of all such maintenance shall be a common expense to all of the Owners. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

4.10 Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and the Articles of Incorporation and Amendments, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.

4.10.1 Maintenance, repair and restoration of the General Common Elements, except as otherwise provided herein.

4.10.2 The obtaining and maintaining of all required insurance as provided herein.

4.10.3 Collection of assessments for real property taxes and assessments.

4.10.4 All powers and duties described in the Act.

4.11 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association. The Association may charge a reasonable fee for copying such materials.

4.12 Manager. The Association may employ or contract for the services of a manager to whom the Board may delegate certain powers, functions, or duties of the Association.

4.13 Implied Rights and Obligations. To the extent not expressly limited by the Association Documents, the Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act, and by the Colorado Nonprofit Corporation Act.

4.14 Notice. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier, or

private service delivery, or the third business day after deposit in the mails for regular delivery at the address of record for real property tax assessment notices with respect to that Owner's Unit.

4.15 Assignment of Future Income. The Association shall have the right to assign its right to future income, including the right to receive Assessments.

## ARTICLE 5 ASSESSMENTS

5.1 Owner's Obligation. By accepting a deed to any Unit, each Owner agrees to pay to the Association all the assessments, to be fixed and levied from time to time as provided in the Declaration, the Articles and Bylaws. Such assessments, together with interest accruing thereon and the costs of collection in the event of a delinquency of payment, shall be the personal obligation of the Person who is the Owner, or the Persons who are jointly and severally the Owner, at the time the assessment was made.

### 5.2 Regular Assessments.

5.2.1 At the annual meeting each year, the Board shall submit a proposed budget, which includes an estimate of the costs and expenses to be incurred by the Association during the year in performing its functions, and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such year which is attributable to the operation and maintenance assessments for the prior year. The annual assessments made for Common Expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all Common Expenses growing out of or connected with the maintenance and operation of the Common Elements, which sums may include, among other things, sewer and water fees, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund, assessments against the Property by the Association, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. The sum or net estimate so determined shall be assessed to the Owners as an operation and maintenance assessment by dividing the total estimate by the total number of Units and assessing the resulting amount to the Owner of each Unit. Assessments shall be paid in monthly installments due on or before the 10th day of each month.

5.2.2 Within ninety (90) days after adoption of the proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

5.3 Special Assessments. If at any time during the fiscal year the regular assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy. The special assessment shall be assessed to the Owners by dividing the total estimate by the total number of Units and assessing the resulting amount to the Owner of each Unit, such assessment to be paid either in equal monthly installments over the balance of the remaining fiscal year, or in a lump sum upon billing as the Board shall determine.

5.4 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least 10 days prior to the due date.

5.5 Reimbursement Assessment. The Board may levy an assessment against any Owner as a result of such Owner's failure to restore or maintain his or her Unit. Such assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses incurred for the repair, maintenance or restoration of such Owner's Unit and shall be due and payable to the Association when levied.

5.6 Reserve Fund. The Association shall establish a reserve fund for the maintenance, repair and replacement of the Project. The reserve fund shall be funded through payments of the annual assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

5.7 Capital Improvements. In addition to regular and special assessments, the Association may levy, in any assessment year, a special assessment for the purposes of defraying in whole or in part the cost of any capital Improvement upon the Project, including fixtures, landscaping or personal property related thereto, provided that such assessment shall have the assent of a majority of the members of the Association subject to the assessment.

**5.8 Enforcement.** In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

5.8.1 The Association may elect to accelerate and declare immediately due and payable the remaining balance of regular or special assessments for such fiscal year.

5.8.2 The Association may bring a suit at law to collect the delinquent assessments, including any accelerated assessment. Any judgment rendered in such action shall include a sum for costs of suit, including reasonable attorney's fees.

5.8.3 All delinquent assessments shall be a lien on the Owner's Unit as provided for in Section 5.9.

5.8.4 Beginning with the second month of delinquency, a the Association may impose late fees in amounts established by the Association, and all delinquent amounts shall be charged interest at the rate of twenty-one percent (21%) per year, or such higher amount as allowed by law.

**5.9 Out-of-State Owners Who Are Not Occupants.** In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:

5.9.1 Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or

5.9.2 Pay the regular assessment pursuant to Section 5.2 hereof in advance by the 10th day of the first month of the fiscal year; or

5.9.3 Either or both of the immediately preceding subsections of Section 5.8 hereof.

**5.10 Lien for Assessments.**

5.10.1 The Association has a statutory lien on a Unit for an assessment levied against that Unit or for fines imposed against its Owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.



5.10.2 Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

5.10.3 A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments becomes due.

#### 5.11 Priority of Association Lien.

5.11.1 A lien under this Article 5 is prior to all other liens and encumbrances on a Unit except:

- (a) Liens and encumbrances recorded before the recordation of the Declaration;
- (b) A First Security Interest on the Unit, which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent, except as provided in subsection 5.11.2; and
- (c) Liens for real estate taxes and other governmental assessments or charges against the Unit.

5.11.2 A lien under this Section is also prior to the First Security Interest described in the preceding subsection 5.11.1(b) to the extent of an amount equal to the annual assessment based on a periodic budget adopted by the Association as provided above which would have become due, in the absence of an acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a non-judicial foreclosure either to enforce or to extinguish the lien. Notwithstanding anything herein to the contrary or anything in the Act to the contrary, if federal law applies, no liens for assessments shall be prior to the lien of a mortgage insured or guaranteed by the FHA, VA or other Agencies to the extent required by such federal law.

5.11.3 This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of section 15-11-201, C.R.S., 1973, as amended.

**5.12 Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or mail, first-class postage prepaid, any Owner, designee of Owner, Security Interest Holder, prospective Security Interest Holder, or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by mail to the inquiring party (the date of posting being deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

**5.13 Maintenance Accounts: Accounting.** If the Association delegates powers of the Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, (c) provide to the Association no less than once per quarter an accounting for the previous quarter, and (d) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

## **ARTICLE 6** **INSURANCE**

**6.1 Insurance.** The Association shall maintain the following types of insurance on the Project, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. In addition, the Association may maintain such insurance on such other property as the Board of Directors may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the agencies with respect to their insurance, guaranty or purchase of Security Interests.

**6.1.1** Property insurance for broad form coverage causes of loss, including Units (but not the finished interior surfaces of the walls, floors and ceilings of the Units or anything within the air space bounded by those surfaces); except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations and other matters normally excluded from property policies.

6.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

6.1.3 A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Project and/or any Owner who controls or disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Units, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Project to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph 6.1.3.

6.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least sixty (60) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

**6.3 Deductibles.** The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

**6.3.1** To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any single Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

**6.3.2** Any loss to any Unit or to any Common Elements which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, the Owner's tenants, family members, guests or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

**6.4 Payment of Insurance Proceeds.** Any loss covered by an insurance policy described in Section 6.1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 7.1 of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Project is terminated.

**6.5 Association Insurance as Primary Coverage.** If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an

Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

**6.6 Acceptable Insurance Companies.** Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

**6.7 Insurance to be Maintained by Owners.** An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each space within a Unit, shall be the responsibility of the Owner of such Unit.

**6.8 Annual Review of Insurance Policies.** All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

**6.9 Notice of Cancellation.** If the insurance that is required to be carried by the Association, as provided in Section 6.1 of this Article, is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

## **ARTICLE 7** **DAMAGE OR DESTRUCTION**

### **7.1 Damage or Destruction.**

**7.1.1** Any portion of the Project which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Project is terminated;

(b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(c) Sixty-seven percent (67%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild; or

(d) Prior to the conveyance of any Unit to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Condominiums rightfully demands all or a substantial part of the insurance proceeds.

7.1.2 The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been taken by eminent domain, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

7.2 Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a special assessment in the aggregate amount of such insufficiency pursuant to Section 5.3 of Article 5 hereof, and shall proceed to make such repairs or reconstruction. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any Security Interest Holders of their respective Units. The assessment provided for herein shall be a debt of each Owner and a lien on the Owner's Unit and the Improvements thereon, and may be enforced and collected in the same manner as any assessment provided for in this Declaration.

7.3 Destruction of Units. If due to casualty, or for any other reason, the space within a Unit shall be destroyed or damaged, then the Owner thereof shall, within a reasonable time thereafter, not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, commence and diligently pursue repair and reconstruction of the space within a

Unit, using any available personal insurance proceeds and personal funds of such Owner, unless the Common Elements are not repaired and reconstructed as hereinabove provided.

**ARTICLE 8**  
**PROPERTY RIGHTS IN THE GENERAL COMMON ELEMENTS**

8.1 **Owners' Easements.** Subject to the provisions of Section 8.2 of this Article, every Owner shall have a nonexclusive right and easement of enjoyment in and to the General Common Elements, plus a right and easement of ingress and egress over, across and upon the General Common Elements, for the purpose of access, ingress and egress to and from his or her Unit and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to every Unit.

8.2 **Extent of Owners' Easements.** The rights and easements created hereby shall be subject to the following:

8.2.1 The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration; and

8.2.2 The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the General Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the General Common Elements to a Security Interest unless such is approved by Members casting at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant; and

8.2.3 The right of the Association to take such steps as are reasonably necessary to protect the General Common Elements against foreclosure; and

8.2.4 The right of the Association to promulgate, amend, repeal, re-enact and publish rules and regulations with which each Member shall strictly comply; and

8.2.5 The right of the Association to regulate and/or restrict vehicular parking, storage and repairs; and

8.2.6 The right of the Association to suspend the voting rights of a Member for any period during which any assessment against the Member's Unit or any other amount due from such Member to the Association remains unpaid and greater than 60 days in arrears and, for a period not to exceed sixty (60) days, for any infraction of the Bylaws of the Association or the Association's rules and regulations; and

8.2.7 The right of the Association to dedicate or transfer all or any part of the General Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Project shall not be deemed a transfer within the meaning of this subsection 8.2.7; and

8.2.8 The right of the Association, through the Board, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

8.2.9 The right of the Association to close or limit the use of the General Common Elements while maintaining, repairing and making replacements in the General Common Elements.

8.3 New Additions to General Common Elements. The Association shall have the right to construct new additions to the General Common Elements. Ownership of any such additions to the General Common Elements shall be apportioned among all Units in proportion to the respective undivided interest in the General Common Elements appurtenant thereto. The Common Expenses for any such additions to the General Common Elements shall be apportioned among all Units as provided in Article 5 hereof. The construction of new additions to the General Common Elements shall not affect an Owner by way of modification of the Owner's voting power in the Association.

8.4 Conveyance or Encumbrance of General Common Elements.

8.4.1 Portions of the General Common Elements may be conveyed or subjected to a Security Interest by the Association only if persons entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant, agree to that action.

8.4.2 An agreement to convey General Common Elements or subject them to a Security Interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The



agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Project is situated and is effective only upon recordation.

8.4.3 The Association, on behalf of all Owners, may contract to convey an interest in the Project pursuant to subsection 8.4.1 of this section, but the contract is not enforceable against the Association until approved, executed and ratified. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

8.4.4 Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale or other transfer of General Common Elements is void.

8.4.5 A conveyance or encumbrance of General Common Elements pursuant to this section shall not deprive any Unit of its rights of ingress and egress to the Unit and support of the Unit.

8.4.6 A conveyance or encumbrance of General Common Elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

8.5 Acquiring and Disposing of Real and Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners tangible and intangible personal property and real property for such uses and purposes as the Board may in its discretion deem appropriate from time to time, 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. Transfer of a Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal and/or real property without any reference thereto. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Board in its sole discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

8.6 Payment of Taxes or Insurance by Security Interest Holders. Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

**ARTICLE 9**  
**CONVEYANCES, OWNERSHIP AND TAXATION OF UNITS**

**9.1 Contracts Entered Prior to Recording of Condominium Map and Declaration.** A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Map and/or this Declaration in the office of the Clerk and Recorder of the County of Mesa, Colorado, may legally describe such Unit in the manner set forth in Section 9.2 of this Article and may indicate that the Map and/or this Declaration are to be recorded. Upon recordation of the Map and this Declaration in the County of Mesa, Colorado, such description shall be conclusively presumed to describe the corresponding Unit shown on the Map and such Unit shall be subject in all respects to this Declaration.

**9.2 Contracts Entered into Subsequent to Recording of Condominium Map and Declaration.** Subsequent to the recording of the Map and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit may legally describe that Unit substantially as follows:

Unit \_\_\_\_, Vistas at Tiara Rado Condominiums, according to the Condominium Map for Vistas at Tiara Rado Condominiums, recorded on \_\_\_\_\_ 20\_\_, at Reception No. \_\_\_\_\_, in the records of the office of the Clerk and Recorder of the County of Mesa, Colorado, and as defined and described in the Declaration of Covenants, Conditions and Restrictions of Vistas at Tiara Rado Condominiums, recorded on \_\_\_\_\_ 20\_\_, at Reception No. \_\_\_\_\_ in said records.

**9.3 Legal Effect of Description.**

9.3.1 Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit which legally describes said Unit substantially in the manner set forth in Section 9.2 of this Article shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit, including the undivided interest in the Common Elements appurtenant thereto and all other appurtenant properties and property rights, and to incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the 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 Common Elements, all as more fully provided in this Declaration.

9.3.2 It shall not be necessary to use the term "unit" as a part of the legally sufficient description of a Unit.

9.4 **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. 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 the Common Elements appurtenant to the Unit in question. The Association shall furnish to the Tax Assessor of the County of Mesa, 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.

9.5 **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. 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.

9.6 **Non-Partitionability.** The Common Elements shall be owned in common by all of the Owners and shall remain undivided and not subject to partition, such that any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. By the acceptance of a deed or other instrument of conveyance or assignment, each Owner specifically waives the Owner's 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 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 and severally, from the parties violating the same, the actual attorneys' fees, costs, expenses and all damages which the Association incurs in connection therewith.

#### **ARTICLE 10** **MECHANIC'S LIENS**

10.1 **Mechanic's Liens.** No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the space within 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 and/or materials furnished in work on the first Owner's Unit.

**10.2 Enforcement by the Association.** At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 10.1 of this Article by collecting from the Owner of the Unit on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, 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 and/or materials 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, 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 be and constitute an additional assessment for collection by the Association subject to all of the provisions of Article 5 hereof.

**10.3 Effect of Part Payment.** In the event a lien attributable to labor performed and/or materials furnished on the Project or any portion thereof, is effected against two or more Units, the Owner(s) of any of the affected Units may pay to the lienholder the amount of the lien attributable to such Owner's Unit and the lienholder shall release such Unit from the lien. Partial payment and release of any such lien with respect to any Unit(s) shall not prevent the lienholder from enforcing his or her rights against the Unit(s) for which payment has not been received.

#### **ARTICLE 11**

#### **ALTERATION AND TERMINATION/RIGHTS OF SECURITY INTEREST HOLDERS**

**11.1 Approval by Members and Security Interest Holders of First Security Interests.** Notwithstanding any provisions of this Declaration to the contrary, the Association shall not:

11.1.1 Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Elements, unless it has obtained the prior written approval of the Owners (other than the Declarant) casting at least sixty-seven percent (67%) of the votes in the Association or of those Security Interest Holders holding at least sixty-seven percent (67%) of the First Security Interests (based upon one vote for each First Security Interest owned):

- (a) by act or omission seek to abandon or terminate the Project;
- (b) change the pro rata interest or obligations of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Unit in the Common Elements;
- (c) partition or subdivide any Unit;

(d) seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Project is not a transfer within the meaning of this clause;

(e) use hazard insurance proceeds for losses to any condominium property (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of such condominium property.

11.1.2 Unless it has obtained the consent of Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association, and of Security Interest Holders of First Security Interests who represent at least fifty-one percent (51%) of the votes of Units that are subject to such First Security Interests (and who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests), add, amend or delete any material provisions of this Declaration, the Articles or Bylaws of the Association which govern any of the following, provided that the implied approval of any Security Interest Holder of a First Security Interest shall be assumed if such Security Interest Holder fails to submit a response to any written proposal for an amendment within sixty (60) days after such Security Interest Holder receives proper notice of the proposal delivered by certified or registered mail with a return receipt requested:

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;
- (c) reserves for maintenance, repair, and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common Elements or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) reduction of insurance requirements;

- (j) regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Units;
- (k) restrictions on the leasing of Units;
- (l) restrictions on an Owner's right to sell or transfer his or her Unit;
- (m) merging or consolidating the Association (other than with another nonprofit entity formed for purposes similar to the Association) or expanding the Association to include land not previously described as Expansion Property which increases the overall land area of the project or number of units by more than ten percent (10%);
- (n) a decision by the Association to establish self-management if professional management had been required by a Security Interest Holder of a First Security Interest or any insurer or guarantor of a First Security Interest;
- (o) restoration or repair of the Project (after a damage or partial condemnation) in a manner other than that specified in the Declaration, the Articles of Incorporation, or Bylaws of the Association; or
- (p) any provisions that expressly benefit Security Interest Holders, or insurers or guarantors of Security Interests.

**11.2 Termination of Legal Status.** Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Security Interest Holders of First Security Interests who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests and who represent at least fifty-one percent (51%) of the votes of the Units that are subject to such First Security Interests. Termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project shall be permitted if agreed to by Security Interest Holders of First Security Interests who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of such Security Interest Holders of First Security Interests and who represent at least sixty-seven percent (67%) of the votes of the Units subject to First Security Interests.

**11.3 Notice of Action.** Upon written request to the Association, identifying the name and address of the Security Interest Holder of a First Security Interest or insurer or guarantor of the First Security Interest, and the residence address of the Unit which is subject to such First Security Interest, each Security Interest Holder of a First Security Interest, or insurer or guarantor of a First Security Interest, shall be entitled to timely written notice of:

11.3.1 any condemnation loss or casualty loss which affects either a material portion of the Project or any Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor of a First Security Interest;

11.3.2 any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor, when such delinquency remains uncured for a period of sixty (60) days;

11.3.3 any lapse, cancellation or material modification of any insurance policy maintained by the Association; and

11.3.4 any proposed action that requires the consent of a specified percentage of Security Interest Holders of First Security Interests as provided in this Article.

11.4 Audit. Any Security Interest Holder of a first security interest, insurer or guarantor of any First Security Interest, who submits a written request therefor, shall be entitled to have an audited financial statement of the Association books for the immediately preceding fiscal year prepared at the Security Interest Holder's expense if such audit is not otherwise available.

11.5 Confirmation of Rights of Security Interest Holders of First Security Interests. No provision of this Declaration, the Articles of Incorporation, or Bylaws of the Association give (or are intended to give) any Owner, or any other party, priority over any rights of the Security Interest Holder of a First Security Interest, pursuant to its First Security Interest, in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or General Common Elements.

**ARTICLE 12**  
**RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS:**  
**THE RIGHT TO COMBINE UNITS**

12.1 Reserved Development Rights of Expansion. Declarant reserves the right for itself and any successor Declarant at any time and from time to time to subject additional phases of the Expansion Property to the provisions of this Declaration to include additional Units, not to exceed 42 units, the maximum number of Units indicated in Section 1.21 herein, and to expand the Common Elements.

12.2 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by the Declarant in the office of the Clerk and Recorder one or more supplemental Declarations and supplemental Maps setting forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion, which shall not cause the

Project to contain more Units than the number of Units permitted under Section 1.21 herein, may be accomplished in stages by successive supplements or in one supplemental expansion. The Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development the Declarant, in its sole discretion, determine. All improvements to be constructed on the Expansion Property shall be substantially completed prior to the recording of the supplemental Declaration and Map adding additional Units and the improvements shall be consistent with the Units hereby submitted to the Declaration in structure type and quality of construction. The Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

**12.3 Expansion of Definitions.** In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units as shown on the Map plus any additional Units added by any supplemental Declarations and supplemental Maps, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

**12.4 Declaration Operative on Expansion Property.** Units added by supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any supplemental Declarations, upon recording the supplemental Map(s) depicting the Expansion Property and supplemental Declaration(s) with the Clerk and Recorder. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion the Expansion Property to the provisions of this Declaration. The rights of Declarant and any successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

**12.4.1** No rights or obligations of any character of any owner in Units in the Expansion Property shall attach until a supplemental Declaration and supplemental Map are filed with the Clerk and Recorder annexing the Units constructed in such area to the Project.

**12.4.2** Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Map or is the owner of a Unit constructed in the Expansion Property and included by a supplemental Declaration and Map) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a supplemental Declaration or supplemental Map shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.



12.5 Reservation of Withdrawal Rights. The Declarant reserves the right for itself and any successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Units and/or Common Elements, provided however that none of the real estate may be withdrawn after any Unit has been conveyed by the Declarant to a purchaser.

12.6 Other Reserved Rights. The Declarant reserves the right at any time and from time to time to: (a) complete improvements indicated on the Map, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size, within one or more Units and within the General Common Elements so long as the Declarant or any successor Declarant continues to be an Owner of a Unit or, if earlier, ten (10) years from the recording of this Declaration with the Clerk and Recorder, (c) subject the Project to a master association, and (d) merge or consolidate the Project with a common interest community of the same form of ownership.

12.7 Termination of Rights. The rights reserved to the Declarant in this Article shall expire, unless sooner terminated as required by the Act, twenty (20) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the rights by the Declarant.

### ARTICLE 13 GENERAL PROVISIONS AND MISCELLANEOUS

13.1 Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

13.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

13.3 Amendments. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by the Declarant at any time prior to the recording of the first deed from the Declarant to an Owner. Thereafter, this Declaration shall only be amended by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Any amendment must be recorded.

13.4 Limitation on Association. Any action, resolution or attempted action of the Association in conflict with any term or provision of this Declaration shall be void and of no force and effect whatsoever.

13.5 Notice. Notice of matters affecting the Project may be given to Owners by mailing such notice by first class mail to the last address provided by the Owner to the Association. If no address has been provided by Owner, such notice shall be mailed to the address of Owner's Unit.

IN WITNESS WHEREOF, Declarant sets its hand and seal the 5<sup>th</sup> day of NOVEMBER, 2012.

HATCH INVESTMENTS LLC,  
a Colorado limited liability company  
By [Signature]  
Robert Curt Hatch, Member

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of November, 2012, by Robert Curt Hatch, as Member of Hatch Investments LLC, a Colorado limited liability company

Witness my hand and official seal.  
My commission expires: 10/29/2013

Gayleen Henderson  
Notary Public



**AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VISTAS AT TIARA RADO CONDOMINIUMS**

This Amendment to Declaration of Covenants, Conditions and Restrictions for Vistas at Tiara Rado Condominiums (Amendment) is made this 14 day of December, 2012, by Hatch Investments LLC, a Colorado limited liability company (Declarant).

RECITALS:

A. Declarant is the owner of certain real property located in Mesa County, Colorado, known and described as Vistas at Tiara Rado Condominiums.

B. The Declaration of Covenants, Conditions and Restrictions for Vistas at Tiara Rado Condominiums was recorded on November 16, 2012, in Book 5389 at Page 43, Reception No. 2633622 of the records of the Mesa County Clerk and Recorder (Declaration).

C. Declarant desires to amend the Declaration pursuant to its terms. Declarant has not conveyed any Units or any other property interests in the Vistas at Tiara Rado Condominiums prior to this Amendment.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. A new Recital D is added as follows:

D. Declarant intends to develop the Property in phases. The initial phase subject to this Declaration is Phase 1, which consists of Units 401 and 402 in Building 4, and Units 501 and 502 in Building 5, as shown on the Map.

2. The first sentence of Section 1.8, the definition of "Common Elements," is amended to provide as follows:

"Common Elements" means all portions of the Property except the Units and except those parcels identified as Outlot A, Outlot B and Outlot C on the Map.

3. Section 1.21, the definition of "Unit," is amended to provide as follows:

"Unit" means an individual air space bounded by and contained within the perimeter doors, windows and the unfinished surfaces of the perimeter walls, floors and ceilings as shown and numbered on the Map together with all fixtures and improvements therein contained. Any indication on the Map to the contrary notwithstanding, the following are not part of a Unit: improvements and services used by more than one Unit. Each Unit and its

identifying number is reflected on the Map. No additional Units will be created by Declarant except as otherwise provided in this Declaration. The maximum number of Units shall be forty-two (42), including any Units which may be incorporated through the integration of the Expansion Property.

4. Except as expressly amended herein, the Declaration shall continue in full force and effect.

DATED the day and year first set forth above.

DECLARANT:

HATCH INVESTMENTS LLC,  
a Colorado limited liability company

By: \_\_\_\_\_  

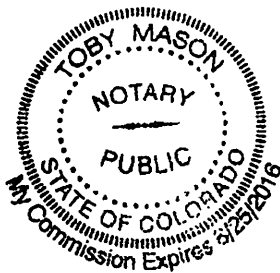

Robert Curt Hatch, Member

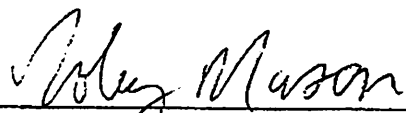
STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA         )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of December, 2012, by Robert Curt Hatch, as member of Hatch Investments LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 6/25/2016



  
\_\_\_\_\_  
Notary Public