



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FLY-N-EAGLE CENTRE, LOT 6

45/224

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**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FLY-N-EAGLE CENTRE, LOT 6**

THIS DECLARATION, is made on the date hereinafter set forth, by Fly-N-Eagle Lot 6, LLC, a Colorado limited liability company, with offices at 1483 N Federal Highway, Ft. Lauderdale, FL 33304 (the "Declarant").

RECITALS

A. Declarant is the owner of certain real property and improvements (the "Property"), described as Lot 6, Fly-N-Eagle Centre, Amended Final Plat, according to the Plat recorded April 18, 2002 as Reception No. 792922, County of Eagle, State of Colorado;

B. Declarant desires to create a Common Interest Community (Condominium) in and upon the Property, the name of which is Fly-N-Eagle Centre, Lot 6, in which portions of the Property will be designated for separate ownership, for common ownership solely by the Owners of separate ownership portions as defined herein, and for future development; and

C. Declarant has caused or will cause to be incorporated under the laws of the State of Colorado, Fly-N-Eagle Centre Lot 6 Owners Association, a nonprofit corporation for the purpose of exercising the functions as herein set forth.

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations which shall be deemed to run with the land comprising the Property and shall burden and benefit Declarant, its grantees, successors and assigns and any person acquiring or owning an interest in the Property and improvements thereon and their respective grantees, successors, heirs, executors, administrators, devisees and assigns.

**ARTICLE 1
SUBMISSION; EFFECT; COMPLIANCE; TERMS**

Section 1.01 Submission of the Property. Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be a burden binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof, their heirs, legal representatives, successors and assigns. Additionally, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, *et seq.*, Colorado Revised Statutes, as it may be amended from time to time (the "Act"). To the extent that the provisions of the Act conflict with the terms of the Declaration, Articles and Bylaws, the terms of the Declaration, Articles and Bylaws shall

control. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

Section 1.02 Effect of Provisions of Declaration. Each provision of this Declaration and each agreement, promise, covenant or undertaking to comply with or to be bound by the provisions of this Declaration which is contained herein shall:

(a) be deemed incorporated in each deed or other instrument by which any right, title or interest in any Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument; and

(b) by virtue of acceptance of any right, title or interest in any Unit by an Owner, such owner shall be deemed to have accepted, ratified, adopted and declared said agreements, promises, covenants and undertakings as personal covenants of such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of the Association.

Section 1.03 Compliance With Declaration, Articles and Bylaws. Each Owner and the Association shall comply strictly with, and each Owner shall cause its Guests to comply strictly with, all of the provisions of this Declaration, the Articles, the Bylaws, the Act and the decisions, Rules and Regulations and resolutions of the Association adopted pursuant thereto, as the same may be amended from time-to-time. The Association or any aggrieved Owner may take judicial action against any other Owner or the Association to enforce compliance with Rules and Regulations or other obligations contained herein or in the Bylaws or to recover damages for violation thereof or injunctive relief or both, with the prevailing party to be awarded its reasonable attorneys' fees, costs and expenses with respect thereto from the non-prevailing party, including costs of collection, where applicable, and including reasonable attorneys' fees, costs and expenses with respect thereto.

Section 1.04 Attorneys Fees. In the event of any litigation concerning the enforcement or interpretation of this Declaration, the Articles, Bylaws or the Rules and Regulations, the prevailing party therein shall be entitled to recover its reasonable attorneys' fees, costs and expenses with respect thereto from the non-prevailing party, including reasonable attorneys' fees, costs and expenses with respect to the collection of any judgment as a result thereof.

Section 1.05 Defined Terms. Each term not otherwise defined in this Declaration or in the Map shall have the meanings specified or used in the Act or other statute governing or applicable to the term in issue.

(1) "Affiliate of Declarant" means any person who controls, is controlled by, or is under common control with the Declarant. A person controls the Declarant if the person: is a general partner, officer, director, or employee of the Declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interests of the Declarant; controls in any manner the election of a majority of the managers or directors of the

Declarant, or has contributed more than twenty percent (20%) of the capital of the Declarant. A person is controlled by the Declarant if the Declarant is a general partner, officer, manager, member, director, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interests of the person; controls in any manner the election of a majority of the directors or managers of the person; or has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described hereinabove are held solely as security for an obligation and are not exercised.

(2) "Allocated Interest" means each Unit's undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association.

(3) "Articles" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

(4) "Association" shall mean the Fly-N-Eagle Centre Lot 6 Owners Association, a Colorado nonprofit corporation, its successors and assigns.

(5) "Board," "Executive Board" or "Board of Directors" shall mean the body, designated in this Declaration to act on behalf of and be the governing body of the Association.

(6) "Building(s)" shall mean the building improvements now or hereafter existing upon the Property.

(7) "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including any amendments to those instruments.

(8) "Common Elements" or "General Common Elements" shall mean all of the Project, except and excluding the portions thereof which constitute individual Units and the portion of the Property as depicted and described on the Map as "Future Development Area" which is subject to Special Declarant Rights and currently unimproved. "Common Elements" also means all parts of the Buildings or any facilities, improvements and fixtures which may be within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the Buildings or any part thereof or any other Unit therein, including without limitation, the following:

(a) the Buildings and all of the land constituting the Property, except for and excluding the Future Development Area;

(b) all foundations, columns, girders, joists, studs, beams and supports of the Buildings;

(c) the exterior walls of the Buildings, the main or bearing walls and columns within the Buildings, the main or bearing subflooring and the roofs of the Buildings, which are not within any Individual Unit;

(d) all entrances, exits, driveways, vestibules, halls, corridors, lobbies, lounges, stairs, stairways, and fire escapes in the Buildings or on the Property, except those located within or specifically appurtenant to individual Units;

(e) any Association offices (except those temporarily occupied by Declarant as provided herein), any utility service and maintenance rooms, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, fire protection, refrigeration, air conditioning, trash, incineration or similar utility, service or maintenance purposes, including furnaces, tanks, pumps, boilers, motors, fans, compressors, flues, piping, wiring, vents, ducts and similar fixtures, apparatus, installations and facilities in the Buildings which are not located within an individual Unit; and

(f) all other parts of the Project necessary or convenient to its existence, maintenance, operation, administration and safety or normally in common use, other than individual Units.

(9) "Common Expenses" shall mean:

(a) all expenses of administration, maintenance, repair or replacement of the Common Elements;

(b) any expenses declared Common Expenses pursuant to provisions of this Declaration, the Articles or the Bylaws;

(c) any expenses determined to be Common Expenses by the Board or by a vote of at least sixty-seven percent (67%) of the voting interests of the Owners, excluding any of Declarant's costs of constructing any Common Elements; and

(d) any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocation to reserves.

(10) "Common Expense Liability" means the liability for Common Expenses allocated to each Unit.

(11) "Common Interest Community" as the term is used herein or in C.R.S. §38-33.3-101, *et seq.*, shall mean the Project as defined in this Declaration, known as "Fly-N-Eagle Centre, Lot 6."

(12) "Dealer" means a person in the business of selling Units for such person's own account.

(13) "Declarant" shall mean the Declarant named herein, Fly-N-Eagle Lot 6, LLC, a Colorado limited liability company and such successor or successors as may be designated hereafter by Declarant by duly executed and recorded written notice or a successor to all or any part of Declarant's interest in the Project by means of foreclosure or conveyance in lieu thereof, effective upon the recording of appropriate instruments and without the further consent of or assignment by Declarant.

(14) "Declaration" shall mean this instrument, as amended or supplemented from time to time, including the Map.

(15) "Declarant Control" shall mean control of the Board by Declarant from the date of this Declaration through the Owner Control Date.

(16) "Development Right" means any right or combination of rights reserved by the Declarant in this Declaration to:

(a) add real estate to the Project;

(b) create Units, Buildings, Common Elements, Limited Common Elements, or other improvements, including with out limitation storage or parking spaces, areas, structures or yards, within this Common Interest Community including on the Future Development Area;

(c) subdivide Units or convert Units into Common Elements; or

(d) withdraw real estate from the Project.

(17) "Dispose" or "Disposition" means a voluntary transfer of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a Security Interest.

(18) "Eligible Mortgagee" shall mean a First Mortgagee who has registered with the Association in accordance with Section 4.08.

(19) "First Mortgage" shall mean a Mortgage or Deed of Trust which has first and superior priority under applicable law.

(20) "First Mortgagee" shall mean a Mortgagee holding a First Mortgage, or the Beneficiary of any First Deed of Trust, as well as any insurer or guarantor of such Mortgage.

(21) "Guest" shall mean any agent, contractor, employee, servant, tenant, guest, family member, licensee or invitee of an Owner or tenant who enters upon the Project.

(22) "Identifying Number" means a symbol or address that identifies only one Unit in the Project.

(23) "Limited Common Elements" shall mean those portions of the Common Elements which are reserved or allocated by this Declaration for the exclusive use of one or more Units but fewer than all Units (except as provided in Section 8.03), shall be identified on the Map and designated as appurtenant to a particular Unit; provided, however:

(a) if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit is an unrestricted part of the Common Elements; and

(b) any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

(24) "Managing Agent" shall mean any person employed by the Association to perform the management and administrative functions of the Project on behalf of the Association.

(25) "Mortgage" shall mean any mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Eagle, Colorado, encumbering a Unit.

(26) "Mortgagee" shall mean any person to whom an indebtedness is owed which is secured by a Mortgage, Deed of Trust or Security Interest.

(27) "Owner" or "Unit Owner" shall mean any record owner (including Declarant and including a contract seller, but excluding a contract purchaser), whether one or more persons, of a fee simple interest in or to any Unit; but excluding any such person having an interest therein merely as a Mortgagee, unless such Mortgagee has acquired fee simple title thereto pursuant to foreclosure or any conveyance in lieu thereof. A person automatically ceases to be an Owner upon conveyance of its Unit by deed or upon entering a binding installment contract. Such cessation of ownership shall not extinguish or otherwise void any unsatisfied obligation of such person existing or arising at or prior to the time of such conveyance, including without limiting the generality of the foregoing, any unsatisfied obligation to pay Association Common Expense Assessments.

(28) "Owner Control Date" shall mean that date which is on or before the later of (a) sixty (60) days after Declarant has conveyed seventy-five percent (75%) of the Units of the Project, or (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business.

(29) "Percentage Interest" shall mean the respective percentage of an Owner's undivided interest in the Common Elements, determined pursuant to Section 8.01.

(30) "Person" or "person" shall mean a natural person, a corporation, a partnership, an association, a trust or any other entity or any combination thereof.

(31) "Map" or "Condominium Map" shall mean the plat or survey, or any supplement thereto, of the Property, showing a survey and legal description thereof, the location of improvements thereon with respect to the boundaries of the Property, together with diagrammatic floor plans of the improvements thereon and showing the boundaries of each Unit, together with Unit numbers identifying the Units and Building numbers identifying the Building, including horizontal and vertical locations and dimensions of the improvements thereon, together with such other information as may be included thereon in the discretion of the Declarant and in accordance with and as may be required by § 38-33.3-209 of the Act. The Map is entitled "Condominium Map, Fly-N-Eagle Centre, Lot 6, Town of Gypsum, County of Eagle, State of Colorado."

(32) "Project" shall mean this Common Interest Community and all of its constituent parts, including the Property, the Common Elements, the Units and the Buildings.

(33) "Purchaser" means a person, other than Declarant or a Dealer, who by means of a transfer acquires a legal or equitable interest in a Unit, other than (a) a leasehold interest in a Unit of less than forty years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences or (b) a Security Interest.

(34) "Rules and Regulations" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

(35) "Security Interest" means an interest in the Project or personal property thereon or therein created by contract or conveyance which secures payment or performance of an 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.

(36) "Special Declarant Rights" means rights reserved for the benefit of Declarant to perform the following acts as specified in the Act, as amended: (a) to complete improvements indicated on the Map; (b) to exercise any Development Right; (c) to maintain sales offices, management offices, signs advertising the Project, and models; (d) to use easements through the Common Elements for the purpose of making improvements within the Project or real estate which may be added to the Project; (e) to appoint or remove any officer of the Association or any Board member during any period of Declarant Control; (f) to construct Building(s), Units, Common Elements, Limited Common Elements and/or other improvements, including with out limitation storage or parking spaces, areas, structures or yards, on the Future Development Area and to cause and designate such improvements as additional Units, Buildings Common Elements and/or Limited Common Elements of the Project and to prepare, execute and record an amendment or amendments to this Declaration and/or the Map for that purpose, including to reallocate the Percentage Interest of the Owners among all Units; and (g) to lease all or any portion of the Future Development Area, including

for purposes of storage and/or parking.

(37) "Unit" shall mean and refer to a physical portion of this Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined pursuant to this Declaration.

ARTICLE 2 NAMES; DESCRIPTION OF REAL ESTATE; MAP

Section 2.01 Names.

(a) **Condominium.** The name of the Common Interest Community (Condominium) is Fly-N-Eagle Centre, Lot 6.

(b) **Association.** The name of the Association is the Fly-N-Eagle Centre Lot 6 Owners Association.

Section 2.02 Real Estate. The Common Interest Community (Condominium) is located in the Town of Gypsum, County of Eagle, State of Colorado. The real estate of the Common Interest Community (Condominium) is as described in Recital A hereinabove and referred to herein as the Property.

Section 2.03. The Map shall be recorded in the office of the Clerk and Recorder of the County of Eagle, Colorado, and may be supplemented or amended as necessary to show all Units and Common Elements subject hereto, and otherwise in compliance with the requirements of Section 38-33.3-209 of the Act.

Declarant hereby reserves unto itself and the Board, the right, from time to time, without the consent of any Owner to: amend the Map and supplements thereto; to conform the Map to the actual location and dimensions of any of the constructed improvements; to establish, vacate and relocate utility easements, access easements and parking spaces; and to establish certain Common Elements as Limited Common Elements. In interpreting any and all provisions of this Declaration, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered in any deed or deed of trust, notwithstanding any minor deviations from the location of such Unit indicated on the Map.

ARTICLE 3 THE ASSOCIATION

Section 3.01 Authority. The business affairs of Fly-N-Eagle Centre, Lot 6, acting through the Board or the Managing Agent, shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time.

Section 3.02 Powers.

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Project.

(b) The Association may assign its future income, including its rights to receive Common Expense Assessments, only by the affirmative vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, at a meeting called for that purpose; provided, however, that no assignment of future income may impair or be in derogation of provisions for mandatory reserve accounts.

Section 3.03 Declarant Control. The Declarant shall have all the powers reserved in Section 38-33.3-303(5) of the Act to appoint and remove officers and members of the Board through the Owner Control Date.

Section 3.04 Membership. All Unit Owners shall automatically be members of the Association, which memberships are appurtenant to the Units and shall automatically pass with fee simple title thereto. Each Unit Owner and Declarant, except as specifically provided otherwise herein, shall automatically be entitled to the benefits and be subject to the burdens relating to such membership. If fee simple title to a Unit is held by more than one person, each such Owner shall be a member of the Association. Memberships in the Association shall be limited to Unit Owners.

Section 3.05 Bylaws and Articles. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may be amplified by provisions of the Articles and Bylaws.

Section 3.06 Board of Directors. The affairs of the Association shall be managed by the Board, which may by resolution delegate any portion of its authority to an Executive Committee, or a Managing Agent. There shall be not less than three (3) nor more than nine (9) members of the Board, the specific number to be determined from time to time pursuant to the Bylaws, all of whom shall be Owners and be elected by the Owners; provided, however, until the Owner Control Date, there may be two (2) members of the Board, and the members of the Board shall be appointed by Declarant, its successors or assigns, and need not be Owners, except as specifically provided for hereinafter.

Section 3.07 Owner Control. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3 %) of the members of the Board must be elected by Unit Owners other than the Declarant. On or before the Owner Control Date, the Unit Owners shall elect a Board of at least three (3) members. The Board shall elect the officers of the Association. The Board members and officers shall take office upon termination of the period of Declarant Control.

Section 3.08 Removal of Board. The Unit Owners, by a sixty-six and two-thirds percent (66

2/3%) vote of the voting interests of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

Section 3.09 Transfer of Control. On or before the Owner Control Date, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

- (a) the original or a certified copy of the recorded Declaration, as amended, the Articles, Bylaws, minute books, other books, records and financial statements, and any Rules and Regulations which may have been promulgated, which shall thereafter be kept current by the Association and made available, both before and after the Owner Control Date, for inspection by Unit Owners and First Mortgagees during normal business hours;
- (b) an accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the period of Declarant Control ends;
- (c) the Association funds or control thereof;
- (d) all of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in the operation and enjoyment of the Common Elements and inventories of these properties;
- (e) a copy of any plans and specifications used in the construction of the improvements in the Project which were completed within two (2) years before, or at any time subsequent to, the recording of this Declaration;
- (f) all insurance policies then in force, in which the Unit Owners, the Association, or its directors and officers are named as insured persons;
- (g) copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Project;
- (h) any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one (1) year prior to the Owner Control Date;
- (i) written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;
- (j) a roster of Unit Owners and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) employment contracts in which the Association is a contracting party; and

(l) any service contract in which the Association is a contracting party or in which the Association or the Unit Owners have any obligation to pay a fee to the persons performing the services.

Section 3.10 Voting Rights of Owners. Subject to Subsection 6.03, the Owner or Owners of each Unit shall be entitled to the corresponding number of votes set forth on *Exhibit A* attached hereto and incorporated herein by reference. The number of votes is based upon each Units' Percentage Interest in the Common Elements. There shall be a total of 100 votes.

ARTICLE 4 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.01 Association as Attorney-in-Fact. The Association is hereby irrevocably appointed attorney-in-fact for the Owners and each of them, to manage, control and deal with the interest of each Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights hereunder and under the Act; to deal with the Project upon its destruction or obsolescence as hereinafter and under the Act provided; and to grant utility easements through any portion of the Common Elements. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties assigned to it hereunder and under the Act.

Section 4.02 Maintenance of Common Elements. The Association shall provide for the care, operation, management, maintenance, modification, repair and replacement of the Common Elements. Without limiting the generality of the foregoing, said obligations shall include the keeping of the Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from the Common Elements which might impair access to the Project or the Units; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

Included in the maintenance of the Common Elements, the Association shall provide exterior maintenance upon the Buildings, including, but not limited to, paint, finishing, maintaining, repair, replacement and care of roofs, gutters, downspouts; exterior building, building foundations; and other exterior improvements. Such exterior maintenance shall not include glass surfaces, which shall be the responsibility of each Owner. The Association shall provide such services in such a manner so as to ensure that the Project will at all times present an attractive and well maintained appearance. The nature and frequency with which such services shall be provided shall be at the sole discretion of the Association.

In the event that the need for maintenance or repair of any of the Common Elements is caused through the willful or negligent acts of a Unit Owner or such Owner's Guests, the cost of such maintenance or repair shall be added to and become a part of the Common Expense Assessment to

which such Unit and/or Unit Owner is subject.

Notwithstanding anything to the contrary contained herein, it shall be the responsibility of the Unit Owners to maintain and repair the bathroom Limited Common Element allocated or reserved to, in whole or in part, to his or her Unit as depicted on the Map.

Section 4.03 Construction of New Common Elements. Subject to the other provisions of this Declaration, the Association shall have the right and power to construct new additions to the Common Elements. Ownership of and the cost of constructing and maintaining any such additions shall be apportioned among all Owners according to their respective Percentage Interests. The construction of new additions to the Common Elements shall not modify or alter the Percentage Interests of the Owners nor their voting rights in the Association.

Section 4.04 Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interests of the Owners. Such activities, functions or services may include the providing of security services, garbage and trash collection services, firewood and janitorial service.

Section 4.05 Labor and Services. The Association:

(a) may engage and pay for the services of a Managing Agent to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are employed directly by the Association or by any person with whom or which it contracts;

(b) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Association and/or Project or the enforcement of this Declaration; and

(c) may arrange with others to furnish lighting, heating, water, trash collection, sewer service, cable, telephone and other utilities and common services.

The term of any agreement for the professional management of the Project or any contract providing for services of the Declarant, may not exceed one (1) year and shall provide for termination by either party, with or without cause and without payment of any penalty or termination fee, on no more than thirty (30) days written notice.

Section 4.06 Property of Association. The Association may pay for, acquire and hold or lease real property and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the Rules and Regulations of the Association, each Owner and each Owner's Guests may use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be distributed as provided in the Articles and the Act. The conveyance of a Unit shall convey to the grantee thereof

ownership of the grantor's beneficial interest in such property without any reference thereto.

Section 4.07 Power to Grant Interests in Common Elements. The Association shall have the power to lease and grant easements, licenses or permits over any portion of the Common Elements or any Unit owned by the Association for utilities and other purposes reasonably necessary or useful for the general health, safety, benefit, welfare proper maintenance or operation of the Project.

Section 4.08 Notice to Eligible Mortgagees. Any First Mortgagee may register with the Association by transmitting to the Association, by registered or certified U.S. Mail, return receipt requested, postage prepaid, a notice setting forth its name and mailing address, the Identifying Number of the Unit encumbered by its Mortgage and the name of its mortgagor, and enclosing a copy of its Mortgage or Deed of Trust. The Association, upon written request, shall transmit to each Eligible Mortgagee:

- (a) notice of any change in the Managing Agent at least ten (10) days before the effective date thereof;
- (b) a copy of the Association's financial statements, as they become available (which may be audited at the request and expense of the requesting Eligible Mortgagee);
- (c) notice of all meetings of the members of the Association which any Mortgagees may attend in person or by representative;
- (d) notice of any condemnation proceeding or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage;
- (e) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) notice of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees; and
- (g) notice that Common Expense Assessment installments pertaining to the Unit encumbered by such Mortgage are delinquent by sixty (60) days or more, where such is the case.

Section 4.09 Suspension of Voting Rights. The Board may suspend any Owner's voting rights in the Association during any period in which such Owner fails to comply with the Association's Rules and Regulations or with any other obligations of such Owner under this Declaration or the Bylaws. Such voting rights shall not be suspended, however, if any Owner in good faith and the Association dispute the amount of any sum owed by such Owner to the Association, provided the Owner timely pays to the Association such sum as the Owner, in good faith, believes is owed.

Section 4.10 Implied Rights. The Association shall have and may exercise any right, power

or privilege given to it expressly by this Declaration and the Articles or Bylaws or reasonably to be implied by law under the Act or otherwise, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

ARTICLE 5 COMMON EXPENSE ASSESSMENTS

Section 5.01 Lien and Personal Obligation. Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association, annual and/or special Common Expense Assessments to meet the Common Expenses, reserves and insurance costs of the Association, as provided for by the Board ("Common Expense Assessment"). The Common Expense Liability shall be the Percentage Interest of the Unit Owner times the amount of Common Expense, as such Common Expense is determined by the Association. Such Common Expense Assessments, including, but not limited to, fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner at the time when the Common Expense Assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed.

The Common Expense Assessments of the Association shall be a continuing lien upon the Unit against which each such Common Expense Assessment is made ("Assessment Lien"). An Assessment Lien hereunder is prior to all other liens and encumbrances on a Unit except as provided in the Act and as otherwise provided by law. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Association's Assessment Lien except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's Assessment Lien to the extent provided in the Act. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure,

nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Common Expense Assessments thereafter becoming due, nor from the lien thereof.

(a) **Enforcement of Lien.** To further evidence the Assessment Lien, the Association may prepare a written notice thereof setting forth the present amount of delinquent Common Expense Assessments and other sums owed by an Owner, the name of the delinquent Owner and a designation of the Unit. Such a notice shall be signed by an officer of or the attorney for the Association or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of the County of Eagle, Colorado. The Assessment Lien may be enforced by foreclosure of the defaulting Owner's Unit in like manner as a mortgage on real estate. In any such foreclosure the delinquent Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for recording the notice of lien and all reasonable attorneys' fees, costs and expenses of the Association with respect thereto. Such Owner shall also be required to pay the Association the monthly Common Expense Assessment installments for the Unit during the period of foreclosure. The Association shall have the power to bid on the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(b) **Release of Lien.** Any recorded notice of lien may be released by recording a Release of Lien executed by an officer of or the attorney for the Association or by the Managing Agent.

(c) **Payment by Mortgagee.** Any Mortgagee of a Unit may pay, but shall not be required to pay, any unpaid Common Expense Assessment installment pertaining to such Unit and, upon such payment, shall have a lien on such Unit for the amounts so paid of the same rank as the lien of its Mortgage.

Section 5.02 Apportionment of Common Expenses. Common Expenses shall be assessed against all Units in accordance with their respective Percentage Interest in the undivided Common Elements.

Section 5.03 Purpose of Common Expense Assessments. The Common Expense Assessments levied by the Association through its Board shall be used for the purposes of promoting the health, safety, and welfare of the residents; for the maintenance, repair and replacement of the Units and Common Elements; and the administration and management of the Association in the informed good faith discretion of the Board.

Section 5.04 Commencement of Common Expense Assessments. The Common Expense Assessment shall be made on an annual basis against all Units and shall be based upon the Associations advance budget of the capital requirements to provide for the administration and performance of its duties during such Common Expense Assessment year. Monthly or quarterly installments of Common Expense Assessments shall begin on the first day of the month following the conveyance of the first Unit to a Unit Owner other than the Declarant.

Section 5.05 Effect of Non-Payment of Assessments; Collection Action. Any Common Expense Assessment, charge or fee provided for in this Declaration or the Act, or any monthly or other

installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate of eighteen percent (18%) per year, compounded annually, or as such other rate to be determined by the Board, and the Association may assess a late charge in addition thereto. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Common Expense Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its Assessment Lien against such Owner's Unit.

An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Common Expense Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's Assessment Lien therefor. Any such delinquent Owner shall pay the reasonable attorneys' fees, costs and expenses of the Association incurred with respect to any such action, as well as costs and expenses of collection, including reasonable attorneys' fees, costs and expenses with respect thereto.

Section 5.06 Working Capital Fund. The Association or Declarant shall require the first Owner of each Unit, except if such Owner is the Declarant, to make a non-refundable payment to the Association in an amount equal to one-sixth (1/6) of the annual Common Expense Assessment against the Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association in a Working Capital Fund as a reserve to meet unforeseen expenditures or to purchase any additional equipment or services. Said Working Capital Fund shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit, as aforesaid and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner or the Declarant from making regular payments of Common Expense Assessments as the same become due. Upon the transfer of a Unit, an Owner or the Declarant shall be entitled to a credit from its transferee for any unused portion of its allocated interest in the aforesaid Working Capital Fund. No portion of the Working Capital Fund may be utilized by Declarant to defray any of Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits at any time prior to the Owner Control Date.

Section 5.07 Replacement Reserve Fund. On and after the Owner Control Date, the Association annual budget shall provide for the maintaining of a reserve fund for the replacement of improvements to the Common Elements that it is obligated to maintain, which reserve fund shall be maintained out of regular Common Expense Assessments.

Section 5.08 Special Common Expense Assessments. The Board shall have the power at any time to levy and impose against all of the Owners and Units, Special Common Expense Assessments for such purpose or purposes, in accordance with this Declaration, the Articles or Bylaws, as the Board deems necessary to maintain the Project as a "first-class" commercial property. Owners having at least sixty-seven percent (67%) of the Percentage Interests may revoke or modify any Special Common Expense Assessment at the annual meeting of the Owners following any such Special Common Expense Assessment, provided such annual meeting occurs no later than three (3) months after the levy of the Special Common Expense Assessment to be revoked or modified, or at a special meeting of the Owners or by a petition to the Board signed by such Owners held or submitted no later

than three (3) months after the levy of the Special Common Expense Assessment to be revoked or modified.

Section 5.09 Exemptions. No Unit owned by Declarant shall be subject to any Common Expense Assessment until such time as a certificate of occupancy for such Unit is issued by the appropriate governmental authority at which time such Unit shall become subject to any Common Expense Assessments otherwise applicable thereto. No Owner may exempt itself from liability for any Common Expense Assessment installment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit

Section 5.10 Other Sums Due the Association. Any sums owed by an Owner to the Association under or pursuant to any provision of this Declaration, the Articles, the Bylaws, the Rules and Regulations or the Act, shall be deemed to be a matured Common Expense Assessment against such Owner and an Assessment Lien against such Unit and the Association shall have all corresponding rights and remedies with respect to the collection thereof, as provided in this Article and this Declaration, the Bylaws or the Act.

Section 5.11 Homestead Waiver. By acceptance of a deed or other instrument of conveyance of a Unit, each Owner is deemed to agree and acknowledge its Unit is exclusively for commercial uses and that the Unit does not qualify for and is not subject to homestead exemption provided by Section 38-41-201, C.R.S. 1973, as amended, and further that, if such homestead exemption does apply, any Assessment Lien created under this Declaration shall be superior to the homestead exemption, and each Owner hereby agrees that the recording of the deed or other instrument conveying to him any Unit shall effectuate the foregoing.

Section 5.12 Statement of Account. Upon payment of a reasonable fee not to exceed Fifty Dollars (\$50.00) and upon fourteen (14) business days prior written notice from any Owner, from any holder of a Security Interest in a Unit, or a prospective purchaser under a valid contract for the sale of a Unit, delivered personally and receipted for or sent by certified mail, first-class postage prepaid, return receipt requested, to the Association, the Association shall issue a written statement setting forth the amount of the unpaid Common Expense Assessments, if any, with respect to the subject Unit, the amount of the current Common Expense and/or Special Common Expense Assessment installment(s), the date such Common Expense Assessment installment(s) becomes due, the amount of the balance of such Owner's Working Capital Reserve Account or other reserve on deposit with the Association and any credit for advance payments or prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

Section 5.13 No Waiver. The omission or failure to fix any Common Expense Assessment or deliver or mail any required statement for any period shall not be deemed a waiver, modification, or release of the Owners from their Common Expense Assessment payment obligations.

Section 5.14 Penalty Assessments. In addition to the Common Expense Assessments

authorized by this Article, the Association may levy penalty assessments which may include penalties or fines imposed against individual Owners and their Units for violations of the provisions of this Declaration or the Articles, Bylaws or Rules and Regulations of the Association, in such reasonable amounts as may be determined by the Board. Any such penalty assessments will be levied only after compliance with notice and hearing procedures properly adopted by the Board and set out in the Bylaws, Rules and Regulations, or otherwise. Any penalty assessment not paid within ten (10) days of the date on which it is due will bear interest at eighteen percent (18%) per year, compounded annually, commencing on the date of the penalty assessment, and until all accrued interest is paid in full. All penalty assessments shall be enforced and collected and shall constitute an Assessment Lien in the same manner as Common Expense Assessments.

Section 5.15 Specific Common Expense Allocation. To the extent required by this Declaration and pursuant to the Act:

(a) any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element, except for parking spaces designated as Limited Common Elements subject to Section 13.09, shall be equally assessed against the Units to which that Limited Common Element is assigned;

(b) any Common Expense or portion thereof benefiting fewer than all of the Units shall be assessed equally, but exclusively against the Units benefited; and

(c) the costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.

Section 5.16 Limitation. The Association shall make no capital expenditures for extraordinary additions, alterations or improvements of or to the Common Elements in excess of Five Thousand Dollars (\$5,000) in any one fiscal year, without prior approval by the Owners having a majority of the Percentage Interests, except in the event of an emergency. Said limitation shall not apply to any expenditures made by the Association for ordinary maintenance, repair or replacement of the Common Elements, nor repair or reconstruction thereof in the event of damage, destruction or condemnation.

Section 5.17 Interest. Any sum owed by an Owner to the Association which is not paid within ten (10) days after the due date thereof shall bear interest from and after the due date at the rate of eighteen percent (18%) per year, compounded annually.

ARTICLE 6 UNITS

*DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FLY-N-EAGLE CENTRE, LOT 6*

Section 6.01 Division Into Units. The Project is hereby divided into ten (10) Units. Upon Declarant's exercise of all of its Development Rights to add the additional Units to the Project, the Project may contain a maximum of twenty-six (26) Units. This is the maximum number of Units the Declarant reserves the right to create and develop.

Section 6.02. Title to a Unit shall be held in fee simple and may be held and owned by more than one person as joint tenants or as tenants in common or in any other relationship recognized under the laws of the State of Colorado. Notwithstanding anything to the contrary contained in this Declaration, if Unit A-10 is conveyed or sold to a Person other than an Owner of another Unit, a bathroom shall be installed and maintained in Unit A-10 during that period of separate ownership. If Unit A-10 is owned by or conveyed to an Owner of another Unit or the Declarant, no bathroom must be so constructed or maintained as the bathroom in the other Unit may be shared.

Section 6.03 Right to Combine Units. Any Owner may physically combine the area or space of one Unit with the area or space of one or more adjoining Units, all of which Units are owned by such Owner, pursuant to and accordance with Section 38-33.3-213 of the Act, and with the written consent of any First Mortgagee having an interest in said Units, and as permitted and in compliance with applicable governmental regulations. For the duration of any such combination, any walls, floors or other structural separations between the Units so combined or any space which would be occupied by such structural separations but for the combination of such Units, shall be deemed to be Limited Common Elements, provided, however, that such walls, floors or other structural separations of such space shall automatically revert to their original status if the combined Units thereafter become subject to separate ownership. Such Owner shall be personally obligated for each of the separate Common Expense Assessment obligations of each of such combined Units.

Section 6.04 Separate Taxation. Each Unit shall be deemed to be a separate parcel of real property and shall be subject to separate assessment and taxation by each taxing jurisdiction to which it is subject, for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building, the Property nor the Common Elements shall be deemed to be an independent parcel. The lien for taxes assessed to any Unit shall be confined to that Unit and 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 or the Common Elements. In the event such taxes or assessments for any year are not separately assessed to each Owner but are assessed to the Project as a whole, each Owner shall pay to the Association the portion thereof equal to its Percentage Interest thereof.

Section 6.05 Right to Mortgage. Any Owner shall have the right from time to time to encumber its Unit by a Mortgage and may create Mortgages junior to the lien of a First Mortgage on his Unit; provided, however, that (i) any such junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien(s) for Common Expense Assessments and other obligations created by this Declaration, the Articles and the Bylaws and (ii) that the Mortgagee under any such junior Mortgage shall release, for the purpose of restoration of any improvements upon the Project, all of its right, title and interest in and to the proceeds of any insurance

policies obtained by the Association. Such release shall be furnished forthwith by a junior Mortgagee upon written request of the Association and if not so furnished, the same may be executed by the Association, as attorney-in-fact for such junior Mortgagees.

(a) **Protection of Mortgagee.** No violation, breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage, taken in good faith and for value; nor shall such violation, breach, failure or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such First Mortgage or result in any liability, personal or otherwise, of any First Mortgagee subject to the priorities of Section 38-33.3-316 of the Act. Any purchaser at foreclosure under a First Mortgage shall, however, take title subject to this Declaration; provided, however, violations, breaches of or failures to comply with any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed the breaches or violations hereof or failures to comply herewith by such purchaser, its heirs, personal representatives, successors or assigns.

(b) **Consent of Eligible Mortgagees.** Any Eligible Mortgagee who fails to submit a response to any written request for its consent or approval within thirty (30) days after receipt thereof by registered or certified U.S. Mail, return receipt requested, shall be conclusively deemed to have consented to and approved such matter.

Section 6.06 Subdivision of Units.

(a) A Unit may be subdivided into two or more Units only upon the affirmative vote of the Unit Owners to which one-hundred (100%) of the votes in the Associations are allocated. Subject to the provisions of the Declaration and other provisions of law, and pursuant to the procedures described in this section, a Unit Owner may apply to the Association to subdivide a Unit after it has secured the foregoing required Unit Owner approval.

(b) In order to subdivide a Unit, the Unit Owner of such Unit, as the applicant, must submit an application to the Board, which application shall be executed by such Owner and shall include:

(1) Evidence that the applicant of the proposed subdivision shall have complied with all building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the proposed subdivision does not violate the terms of any document evidencing a security interest encumbering the unit;

(2) The proposed reallocation of interests, if any;

(3) The proposed form for amendments to the Declaration, including the plats or maps, as may be necessary to show the units which are created by the subdivision and their dimensions, and identifying numbers;

(4) A deposit against attorney fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and

(5) Such other information as may be reasonably requested by the Board.

(c) No subdivision of Units shall be effected without the necessary amendments to the Declaration, plats or maps, executed and recorded pursuant to section 38-33.3-217(3) and (5) of the Act.

(d) All costs and attorney fees incurred by the Association as a result of an application shall be the sole obligation of the Applicant.

ARTICLE 7 DESCRIPTION OF UNITS

Section 7.01 Prior to Recording of Declaration and Map. Every contract for the sale of a Unit entered into prior to the recording of the Map and this Declaration may legally describe a Unit by its Identifying Number, followed by the words "Fly-N-Eagle Centre, Lot 6," with further reference to the Map thereof and this Declaration to be recorded. Upon recordation of the Map and this Declaration, such description shall be conclusively presumed to relate to the Units therein described.

Section 7.02 After Recording of Declaration and Map. After the Declaration and Map have been filed for record in the real estate records of the County of Eagle, State of Colorado, every instrument affecting title to a Unit may describe that Unit by its Identifying Number, in substantially the following form:

Unit _____, Fly-N-Eagle Centre, Lot 6, as defined in and according to the Declaration of Covenants, Conditions and Restrictions for Fly-N-Eagle Centre, Lot 6, recorded in the real estate records of the Clerk and Recorder for the County of Eagle, Colorado, on _____, 200__, at Reception No. _____, and the Condominium Map therefore recorded in the real estate records of the Clerk and Recorder for the County of Eagle, Colorado, on _____, 200__, at Reception No. _____.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect title to a Unit. Each such description shall be construed to include a nonexclusive easement for ingress and egress throughout and for the use of the Common Elements, the right to the exclusive use of the appurtenant Limited Common Elements and the other easements and rights appurtenant to such Unit.

Section 7.03 Supplements and Amendments. The reference to the Map or the Declaration

in any instrument shall be deemed to include any supplement or amendment to either, without specific reference thereto.

Section 7.04 No Partition. The Common Elements shall be owned in common by all of the Owners and no Owner or any other person shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance of a Unit, each Owner shall be deemed to specifically waive any right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements and this Section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association, and hereby agrees to reimburse the Association for the Association's costs, expenses and reasonable attorneys fees in defending any such action. Notwithstanding the foregoing, any Co-Owner of a Unit may sue for partition among the Co-Owners of such Unit, provided such partition shall take the form of a sale of the entire Unit and a subsequent division of the proceeds of the sale among such Co-Owners. Partition in kind shall not be allowed and each Owner hereby expressly waives any and all rights of and to partition in kind.

ARTICLE 8 INTEREST IN COMMON ELEMENTS

Section 8.01 Percentage Interest. The Percentage Interest of the Owners in the undivided Common Elements appurtenant to each Unit is a percentage of the whole based upon each Unit's approximate total respective square footage of floor area of the Buildings. The Percentage Interest in the Common Elements appurtenant to each Unit and the respective Owners thereof is set forth in *Exhibit A* attached hereto and made a part hereof subject to amendment as provided herein. Each Unit conveyed to an Owner by a separate deed shall be deemed to be a separate Unit for any and all purposes of this Declaration. The square footage set forth on *Exhibit A* are approximate and are for purposes of assessment and voting only.

Section 8.02 Inseparability of a Unit. An Owner's Percentage Interest in the undivided Common Elements shall not be separate from the Unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Unit, even though such interest is not expressly mentioned or described in the instrument of conveyance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

Section 8.03 Right of Use. Each Owner may use the Common Elements and its Unit's appurtenant Limited Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Association may from time to time adopt Rules and Regulations governing the use of the Common Elements. Such Rules and Regulations shall be uniform and nondiscriminatory and further the purposes of this Declaration. Each Owner, by the acceptance of a deed or other instrument of conveyance of a Unit, shall be conclusively deemed to agree to be bound by all such Rules and Regulations.

ARTICLE 9