

any Condominium Unit to a person other than a Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Project rightfully demands all or a substantial portion of the insurance proceeds.

- 13.3.3 **Special Assessment to Cover Shortfall in Insurance Proceeds.** If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment. Such Special Assessment shall be assessed against all Condominium Units in accordance with Section 7.7 hereof, but without the requirement of complying with the budget approval process set forth in Section 7.3 above. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid Special Assessment. Notwithstanding the foregoing, the Association shall have authority to assess negligent Unit Owners causing any loss all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of repair and reconstruction.
- 13.3.4 **Distribution of Excess Insurance Proceeds.** Except with respect to repair or replacement costs for which any Owner is responsible by reason of such Owner's negligent act or otherwise, the cost of repair or replacement of any portion of the Project in excess of insurance proceeds and reserves shall be 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 and Limited Common Elements that are not rebuilt must be distributed to the owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Units' undivided interests in all Common Elements.
- 13.4 **Obsolescence.** Sixty-seven percent (67%) of the Owners may agree that the Common Elements are obsolete and either terminate the Project in accordance with Section 13.2 above or adopt a plan for the renewal and reconstruction thereof. If a plan for renewal or reconstruction is adopted, notice of such plan shall be recorded in the City and County of Denver, Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Assessment for the renewal and reconstruction of the Common Elements shall be a debt of each Owner and a lien on such Unit Owner's Condominium Unit, and may be enforced and collected as provided in Section 7.0 and 7.10 hereof.
- 13.5 **Condemnation.** If at any time during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 13.5 shall apply:
- 13.5.1 **Payment of the Condemnation Award.** All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association, as attorney-in-fact for the Owners, as provided in Section 13.1 above. The Association shall have the right to appear in any condemnation proceeding on behalf of the Owners.

- 13.5.2 Allocation and Distribution of Condemnation Award to Owners.** In the event that the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board of Directors of the Association the same as if there had been a termination of the Project under Section 13.2; *provided, however*, that if a standard different from the value of the Project as a whole is employed as the standard of the Condemnation Award in the negotiation, judicial decree or otherwise, in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.
- 13.5.3 Partial Condemnation and Distribution of Award.** Subject to the provisions of Article XVI hereof, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: As soon as practicable, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners in accordance with the undivided interest in the Common Elements appurtenant to each Condominium Unit; (ii) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Condominium Unit, including but not limited to the Limited Common Elements appurtenant thereto, and to the improvements an Owner has made within such Owner's Condominium Unit shall be apportioned to the particular Condominium Unit involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree. Notwithstanding anything to the contrary containing in this Declaration, the allocation of the Condemnation Award to each affected Condominium Unit shall be based on the comparative values of the affected Condominium Units as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including, but not limited to, recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.
- 13.5.4 Reallocation of Allocated Interests Upon Partial Condemnation.** In the event a partial taking results in the taking of a complete Condominium Unit, the Owner(s) thereof shall automatically cease to be a Member(s), shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and Assessment in accordance with this Declaration according to the principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and to the Eligible First Mortgagees of all remaining Condominium Units for amendment of this Declaration. The Condemnation Award as to each such completely taken Condominium Unit shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.

13.5.5 Disposition and Compensation for Remnants Created by Partial Condemnation. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 13.3 hereof. If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award will include compensation to the Owner for that Unit and its Allocated Interests whether or not any Common Elements are acquired. The Owner(s) thereof shall automatically cease to be a Member(s) of the Association, shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking. Any remnant of a Unit remaining after a part of a Unit is taken pursuant to this subsection (f) is thereafter a Common Element.

13.5.6 Required Amendment to this Declaration. Except as provided in subsection 13.5.1 above, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Unit and its Allocated Interest in the Common Elements whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, the Unit shall retain its one vote in the Association, but its interest in the Common Elements and its share of Assessments shall be reduced by the same percentage that the square footage of the Unit was reduced by the taking, and the amount of the reduction shall be allocated among all Units (including the Unit affected by the taking) pro rata in proportion to their interest in the Common Elements after the reduction described above. The reallocation of Allocated Interests pursuant to this Section shall be confirmed by an Amendment to this Declaration prepared, executed and recorded by the Association.

ARTICLE 14 BENEFITS AND BURDENS OF DECLARATION

- 14.1 Covenants Running with Real Estate.** The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Real Estate.
- 14.2 Binding Upon and Inure to the Successors.** The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of Declarant, the Association, all Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant can only be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity, in accordance with the provisions of the Common Interest Act.

ARTICLE 15 AMENDMENT OF DECLARATION

- 15.1 Amendment.** Except for Amendments that may be executed by a Declarant or by the Association under the provisions of this Declaration or the Common Interest Act, and subject to the applicable requirements of Article XVI, with respect to approval by Eligible First Mortgagees, the provisions of this Declaration and/or the Condominium Map may be amended, in whole or in part, at any time and from time to time, by vote or agreement of Owners holding at least sixty-seven percent (67%) of the votes in the Association, and Declarant, provided that Declarant's right to consent under this Section shall expire on the first to occur of the conveyance by a Declarant of all Condominium Units to Owners (other than a Declarant) or ten (10) years after the date this Declaration is recorded in the City and County of Denver, Colorado. Every Amendment to the Declaration and/or the Condominium Map must be recorded in the office of the Clerk and Recorder of the City and County of Denver and is effective only upon such recording. Notwithstanding the foregoing, except to the extent expressly

