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**AMENDED AND RESTATED
CONDOMINIUM DECLARATION OF CANYON CLUB
CONDOMINIUMS**

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**AMENDED AND RESTATED
CONDOMINIUM DECLARATION OF CANYON CLUB CONDOMINIUMS**

This Amended and Restated Declaration is made effective upon recording.

RECITALS:

A. Declarant, Radford & Co., a Washington corporation, recorded that certain Condominium Declaration of Canyon Club Condominiums on June 30, 1977 in Book 1467 at Page 671, in the Office of the Clerk and Recorder for the City and County of Denver, State of Colorado, as amended and supplemented by documents of record, if any ("Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Condominium Declaration of Canyon Club Condominiums ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto be superseded and replaced by this Declaration;

C. The Original Declaration provides for and allows for this Declaration in Paragraph 18, which provides as follows:

This Declaration shall not be amended unless the owners representing an aggregate ownership of at least seventy-five percent (75%) of the general common elements and at least seventy-five percent (75%) of the holders of recorded first mortgages or deed of trust consent and agree to such amendment...;

D. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), the required approval of Owners representing an aggregate ownership of at least 75% of the general common elements for amendment is now void.

E. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), the amendment requirement for this Declaration is now Owners representing an aggregate ownership of at least 67% of the general common elements.

F. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

G. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

H. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

I. The purpose of the Association, as provided in the Declaration, is to preserve the value and desirability of the Community and the Units and to further the interests of the residents of the Community and Members of the Association; and

J. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), Owners representing an aggregate ownership of at least 67% of the general common elements have approved this Declaration. Additionally, having complied with the provisions of C.R.S. §38-33.3-217(1)(b), 75% of the first mortgagees have approved this Declaration. Alternatively, a court order entered by the District Court for the City and County of Denver, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW, THEREFORE, the Original Declaration is replaced and amended and restated as follows:

ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms.

Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended.

(b) "Allocated Interests" shall mean the undivided interest in the Common Elements, the Common Expense liability and the votes in the Association.

(c) "Architectural Review Committee" or "Committee" means the committee, if any, appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the

Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(d) "Assessment" shall include all Common Expense Assessments, insurance Assessments, utility Assessments, and any other expense levied to a Unit pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(e) "Association" shall mean Canyon Club Condominium Owners Association, a Colorado nonprofit corporation, and its successors and assigns.

(f) "Board" or "Board of Directors" or "Executive Board" shall mean the body designated in the Governing Documents to act on behalf of the Association.

(g) "Common Elements" shall mean the Property within this Community other than the Units, which portion of the Property may be designated on the Map and in this Declaration. Common Elements shall include Limited Common Elements. The Common Elements shall be owned, as tenants in common, by the Owners of the separate Units, each owner of a Unit having an undivided interest in the Common Elements.

(h) "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(i) "Community" shall mean the Community of Canyon Club, also known as the Canyon Club Condominiums, which Community is a Condominium Community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

(j) "Declaration" shall mean and refer to this Amended and Restated Condominium Declaration of Canyon Club Condominiums, as amended, recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado.

(k) "Eligible Mortgage Holder" shall mean a holder of a first mortgage on a Unit that has submitted a written request for the Association to notify such holder of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders, which request must contain its name, address, and the legal description and address of the Unit upon which it holds a security interest.

(l) "Governing Documents" shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as they may be amended from time to time.

(m) "Limited Common Elements" shall mean those portions of the Common Elements, if any, which are limited to and reserved for the exclusive use of one or more, but fewer than all of the Owners.

(n) "Map" shall mean the Condominium Map of Canyon Club (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the floors and elevations, and all of the land and improvements thereon as the Map may be amended or supplemented from time to time, which Map is incorporated herein and made a part of this Declaration by reference. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" or "Map" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(o) "Member" shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(p) "Owner" shall mean the owner of record title, whether one or more persons or entities to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(q) "Pet" shall mean and include cats, dogs, birds, reptiles or other household animals, as may be defined in or supplemented by the Rules and Regulations.

(r) "Property" shall mean the property described in the Original Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(s) "Rules and Regulations" shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community, and/or clarification of the Governing Documents, including any amendment to those instruments.

(t) "Unit" shall mean a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

ARTICLE 2 NAMES/DESCRIPTION OF PROPERTY

Section 2.1 Name and Type.

The type of Common Interest Community is a condominium community. The name of the Community is "Canyon Club" and is also known as "Canyon Club Condominiums." The name of the Association is the "Canyon Club Condominium Owners Association."

Section 2.2 Property.

The Community is located in the City and County of Denver, State of Colorado. The Property subject to this Declaration is described in *Exhibit A* of this Declaration, in the Original Declaration, in the Map, and/or as is consistent with the common plan and scheme for the creation and operation of the Community. The Community may be subject to easements or licenses granted pursuant to this Declaration, granted by authority reserved in any recorded document, or established in the Act.

Section 2.3 Utility, Map and Map Easements.

Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat or the Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.4 Easements for the Association and Owners.

Each Unit shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors), and to each Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages. Non-emergency repairs shall be made only during regular business hours on business days after at least 24 hours notice to the occupants of a Unit wherein repairs are to be made. The Association shall have an easement to enter a Unit to inspect for events which may be causing waste of water, heat or any other utility provided by the Association or paid as a part of Common Expenses. If the inspection reveals that the Owner has failed to maintain the Unit so as to prevent waste of common utility services provided for as a Common Expense, the Board shall follow the procedures provided for in this Declaration.

Section 2.5 Easement for Encroachments.

If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit currently encroaches upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same, except for incidental encroachments that may occur as a result of shifting of soils or settlement of a Unit. If any part of a Unit subsequently encroaches upon the Common Elements or upon another Unit, that encroachment shall be subject to all available remedies of the Association, or as allowed under this Declaration, unless the encroachment has been reviewed and approved (as provided for in this Declaration). The easement shall extend for whatever period of time the encroachment exists. Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Unit. The actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such Unit indicated on the Map.

Section 2.6 Owners' Easements of Enjoyment.

Every Owner shall have a right and easement to use and enjoy the Common Elements and Limited Common Elements assigned to his or her Unit, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Elements;
- (c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Elements;
- (d) the right of the Association to transfer or convey ownership of the Common Element, or any portion thereof, subject to the prior approval of 67% of the total Association vote; provided that all Owners of Units to which any Limited Common Element is allocated shall approve of any transfer or conveyance of that Limited Common Element;
- (e) the right of the Association to suspend the voting rights and the right to use of any Common Elements and recreational facilities for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater; provided, however, that suspension of voting and use rights shall be automatic during any period that an Owner is in default in the payment of any Common Expense Assessment;

(f) the right of the Association to close portions of the Common Elements for maintenance, repair, replacement, and improvement; and

(g) the right of the Association to change use of, add or remove improvements to the Common Elements.

Section 2.7 Delegation of Use.

Owners may transfer or share their right of enjoyment to the Common Elements and facilities to/with their family, tenants, invitees, lessees, and guests, subject to Rules and Regulations. If the Owner transfers rights to use the Common Elements and facilities to tenants or contract purchasers who reside in the Unit, the Owner shall not be entitled to use the Common Elements and facilities. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the recreational amenities of the Community through Rules and Regulations and/or reasonable fees charged for such use.

Section 2.8 Disclaimer of Liability.

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Elements or any of their improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Elements, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Elements and their improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership.

Every person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Unit shall be entitled to cast votes according to the allocated interests section of this Declaration. Fractional and cumulative voting are prohibited.

Section 3.2 General Purposes and Powers of the Association.

The Association, through its Board of Directors, shall perform functions and manage the Community as provided in the Recitals section of this Declaration. All Owners and any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association.

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.4 Managing Agent.

The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on 30 days notice, with or without cause, and without a cancellation fee. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.5 Allocated Interests.

The ownership interest, Common Expense liability and votes in the Association allocated to each Unit are set as follows:

- (a) the percentage of ownership of the Common Elements, as set forth in Exhibit B of this Declaration;
- (b) the percentage of liability for Common Expenses, as set forth in Exhibit B of this Declaration; and

(c) the number of votes in the Association, equally, as set forth in Exhibit B of this Declaration.

Section 3.6 Indemnification.

To the full extent permitted by law, each officer, director or committee member of the Association and other volunteer appointed by the Board of Directors shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or other volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or other volunteer appointed by the Board of Directors at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and Colorado law.

Section 3.7 Security Disclaimer.

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.8 Education and Training.

As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

ARTICLE 4 UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1 Number of Units.

The number of Units presently included in the Community is 175.

Section 4.2 Unit Boundaries.

(a) Boundaries. The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(i) The unfinished interior surfaces of the perimeter walls. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the floors, walls and ceilings are part of the Common Elements. Where found on the walls and ceilings, the interior surfaces of built-in fireplaces with their flues in the closed position shall be boundaries of the Unit.

(ii) Unfinished interior surfaces of floors, or the lowermost floors, if it is a Unit containing more than one level;

(iii) Unfinished interior surfaces of ceilings, or the uppermost ceilings, if it is a Unit containing more than one level;

(iv) The windows and window frames, doors and door frames of the Unit.

Each Unit includes the spaces and improvements lying within the boundaries described above, including windows, window frames, doors and door frames, and as depicted on the Map.

Section 4.3 Licensing of Use of Common Elements.

The Association, acting through the Board, may license use of parts of the Common Elements to Owners, for other uses on such terms and conditions as determined by the Board.

Section 4.4 Limited Common Elements.

(a) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements.

(ii) Any balconies, patios, decks, steps, stoops, walkways, storage areas, storage units that are attached to and part of the original construction of the building, or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(iii) Carports and parking spaces which have been assigned and are appurtenant to a Unit.

(b) The Association may modify Limited Common Elements without a membership vote, but only with consent of the Owner to whose Unit the Limited Common Element is appurtenant. The Association may also, without a membership vote, assign or reassign Limited Common Elements not previously assigned with the consent of the affected Owner(s) and the Association, provided that any such assignment or reassignment shall be made in accordance with the Act.

ARTICLE 5 MAINTENANCE AND SERVICE RESPONSIBILITIES

Section 5.1 Association Maintenance and Service Responsibilities.

(a) The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities. The Association shall maintain, repair, replace, and improve those items set forth in Exhibit C of this Declaration.

(b) Maintenance of Common Elements by Owner. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(c) **Association Discretion.** The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided however, the Association shall provide Owners with 15 days prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(d) **Damage to Unit by Association.** The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) **Liability of Association.**

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:

(1) for injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(2) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Unit or such Owner's occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

(iii) The Association shall not be liable to any Owner, or any Owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is caused by an act of God, is not foreseeable or is not a natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 5.2 Owner's Maintenance Responsibility.

Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain, repair, replace, and improve all items set forth in Exhibit C of this Declaration.

Section 5.3 Owner Responsibilities.

Each Owner shall have the responsibility to:

- (a) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other persons in Units;
- (b) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;
- (c) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants, guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment;
- (d) An Owner shall be liable for all injuries or damages to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Unit or any appurtenant Limited Common Element; and