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CONDOMINIUM DECLARATION  
FOR  
MIDLAND CENTER LOT 2 CONDOMINIUMS

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**CONDOMINIUM DECLARATION  
FOR  
MIDLAND CENTER LOT 2 CONDOMINIUMS**

This Condominium Declaration dated the 7th day of MARCH, 2011 is made by Midland Center, LLC, a Colorado limited liability company (the "Declarant").

**RECITALS**

Declarant is the owner of certain real property situated in the County of Garfield, State of Colorado, being more particularly described on Exhibit A attached hereto, known as "Lot 2, Midland Center PUD," City of Glenwood Springs, County of Garfield, State of Colorado ("Real Estate").

Declarant is constructing on the Real Estate a commercial building and other improvements which Declarant desires to subject to condominium ownership under this Declaration pursuant to the provisions of the Colorado Common Interest Ownership Act ( the "Act"); and

Declarant desires to subject the Real Estate and improvements to the covenants, conditions, restrictions, easements, reservations, rights-of-way and other charges set forth herein for the purpose of protecting the value and desirability of said Real Estate and for the purpose of furthering a plan for the improvement, sale and condominium ownership of the Real Estate for commercial use only, to the end that a harmonious and attractive development of the designated portions of said Real Estate may be accomplished and the health, comfort, safety, convenience and general welfare of Declarant, its successors and assigns in the designated portions of said Real Estate, or any parts thereof, promoted and safeguarded.

Declarant hereby submits the above-described Real Estate together with all improvements, appurtenances and facilities hereto and now or hereafter thereon, to condominium ownership under the Act, as the same may be amended from time to time, and hereby imposes upon all of the Real Estate the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which shall be deemed to run with the above-described Real Estate and shall be a burden and a benefit to Declarant, its successors, assigns, and any person acquiring or owning an interest in the above-described Real Estate, their grantees, successors, heirs, personal representatives, executors, administrators, devisees or assigns.

**ARTICLE 1  
DEFINITIONS**

ARTICLE 1.1        Allocated Interests. "Allocated Interests" shall mean, with respect to each Condominium Unit, a fraction or percentage of the undivided interests in the Common Elements and in the common expenses of the Association allocated to such Condominium Unit as stated in Section 2.1 herein and a portion of the votes in the Association allocated to such Condominium Unit as recited in Section 5.1 of this Declaration.

ARTICLE 1.2        Association. "Association" shall mean and refer to Midland Center Lot 2 Condominium Association, Inc., a Colorado nonprofit corporation, its successors and assigns. The Association shall act by and through its Executive Board and officers unless the Articles of Incorporation or Bylaws of the Association or this Declaration specifically require otherwise. The Association shall be organized no later than the date the first Unit is conveyed by the Declarant to another person.

ARTICLE 1.3        Building. "Building" shall mean and refer to any building(s) (including all fixtures and improvements therein contained) located on the Real Estate and within which one or more Units or Common Elements are located.

ARTICLE 1.4        Common Elements. "Common Elements" shall mean the Real Estate and all improvements constructed thereon, except the Units, and shall include, without limitation, the following:

- (a)        The Building(s) (including, but not by way of limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, flues, hallways, roofs, elevators, stairs, stairways, mechanical rooms, maintenance/storage rooms, and entrances and exits, and the mechanical installations of the Building(s) consisting of the equipment and materials making up any services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating, which exist for common uses, including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith), except for the Units; and
- (b)        Any sidewalks, walkways, paths, fences, walls, bike racks, grass, shrubbery, trees, driveways, private streets, parking areas and parking structures, signs and supporting structures for signs, landscaping and gardens, if any, located on the Real Estate and any such areas situated on real estate owned by others as to which the owners or any of them have a right of use by easement or license; and
- (c)        The tanks, pumps, motors, fans, compressors, ducts and, in general, all apparatus, installations and equipment of the Building(s) existing for the common use of some or all of the Owners; and
- (d)        In general, all other parts of the Project existing for the common uses of some or all of the Owners and all other parts of the Project necessary or convenient to its existence, maintenance or safety or normally in common use.

ARTICLE 1.5        Condominium Map. "Condominium Map" shall mean and refer to the condominium map of the Real Estate and improvements that are subject to this Declaration and which are designated as the Condominium Map for Midland Center Lot 2 Condominiums, recorded or to be recorded in the records of the office of the Clerk and Recorder of the County. More than one Condominium Map or supplement thereto may be recorded, and if so, then the term "Condominium Map" shall collectively mean and refer to all of such condominium maps and supplements thereto.

ARTICLE 1.6        Condominium Unit. "Condominium Unit" shall mean and refer to a Unit, together with all fixtures and improvements therein contained and together with any Limited Common Element that may be appurtenant to said Unit and an undivided interest in the Common Elements appurtenant to the Unit as shown on the Condominium Map incorporated herein by this reference.

ARTICLE 1.7        City. "City" shall mean and refer to the city of Glenwood Springs, Colorado.

ARTICLE 1.8        Declarant. "Declarant" shall mean and refer to Midland Center, LLC, a Colorado limited liability company, its successors and assigns, if such successors and assigns are designated by the then-Declarant to serve as a Declarant for any specified purposes or for all purposes under this Declaration, in a written instrument duly executed by the then-Declarant and the designated successor or assignee and recorded in the County.

ARTICLE 1.9        Declaration. "Declaration" shall mean and refer to this Condominium Declaration, as it may be amended from time to time.

ARTICLE 1.10       First Mortgage. "First Mortgage" shall mean a Security Interest on a Condominium Unit which has priority over all other Security Interests on the Condominium Unit.

ARTICLE 1.11       First Mortgagee. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

ARTICLE 1.12       General Common Elements. "General Common Elements" shall mean and refer to all of the Common Elements except the Limited Common Elements. The General Common Elements may not be conveyed or encumbered except as permitted under the Act; provided, however, that the granting of permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Project will not be deemed to be a conveyance.



ARTICLE 1.13 Limited Common Elements. "Limited Common Elements" shall mean and refer to those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Condominium Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include:

- (a) the utility, heating, air conditioning and domestic hot water equipment exclusively associated with or providing service to a particular condominium Unit or Units, including any vent or ductwork associated with a particular Unit or Units;
- (b) Any entrance, lobby or elevator exclusively serving one or more Units;
- (c) the plate glass associated with a particular Unit or Units, if any, shall be a limited common element appurtenant to that Unit or those Units.

All Limited Common Elements shall be used in connection with the applicable Unit to the exclusion of the use thereof by the other Owners, except by invitation.

ARTICLE 1.15 Member. "Member" shall mean and refer to each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit.

ARTICLE 1.16 Owner. "Owner" shall mean and refer to any record owner (including Declarant and including a contract vendor), whether one or more persons or entities, of a fee simple title interest to any Condominium Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

ARTICLE 1.17 Project. "Project" shall mean and refer to the totality of all the Real Estate, Building(s), Condominium Units and Common Elements.

ARTICLE 1.18 Real Estate. "Real Estate" shall mean and refer to that certain property described in the first recital of this Condominium Declaration.

ARTICLE 1.19 Security Interest. "Security Interest" shall mean an interest in real estate or personal property 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 an association and any other consensual lien or title retention contract intended as security for an obligation.



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ARTICLE 1.20      Unit. "Unit" shall mean and refer to the air space contained within the enclosed rooms occupying part of a floor or floors in any of the Buildings, and bounded by the unfinished interior surfaces of the perimeter walls (or the demising walls, if two or more Units adjoin each other), unfinished interior surfaces of floors (or the lowermost floor in respect of the Units containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, in respect of the Units containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of the respective Building, and which is separately identified on the Condominium Map. The term "Unit" does not include any utility facility running through the Unit that serves more than one Unit or any other Common Element or part thereof located within the Unit. In the case of walls, floors and ceilings that are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallboard paint and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. Each Unit's individual HVAC system is specifically included as a part of that Unit.

## ARTICLE 2

### DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

ARTICLE 2.1      Division Into Condominium Units. The Project is hereby divided into fourteen (14) separate Condominium Units, each of which shall have an undivided interest in the Common Elements appurtenant thereto as identified on Exhibit B attached hereto, which undivided interest in the Common Elements has been computed for each unit by dividing the square footage of each Unit by the total square footage of all Units, which is 34,423 square feet. There shall be no more than fourteen (14) Condominium Units in the Project, all of which shall be commercial condominium Units, unless and until such time as this Declaration is amended to provide otherwise.

ARTICLE 2.2      Inseparability. Except as provided in Section 2.4 hereof, each Condominium Unit, appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Condominium Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Condominium Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Condominium Unit, together with all appurtenant rights, interests, duties, and obligations created by law or by this Declaration.

ARTICLE 2.3      Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment of the Condominium Unit, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section 2.3 may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall

entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs, expenses and all damages which the Association incurs in connection therewith.

ARTICLE 2.4      Right to Combine or Divide Condominium Units.

(a)            The Owner(s) of any Unit shall have the right to combine two or more adjacent Units or to re-subdivide a Unit which is the product of such combination to create the Units which existed at the time this Declaration was recorded in the real property records of the County. There may be no other division, or combination of Units or relocation of boundaries between adjoining Units or within a Unit. A combination or division of Units shall require the consent of the Association, the appropriate approval from the City of Glenwood Springs, and shall be done in accordance with the procedures set forth in the Act. All costs incurred in connection with the combination or division shall be borne by the Owner or Owners of the affected Units, including all costs incurred by the Association in connection therewith. In connection with any such combination or division, the Owners of the Units being so combined or divided shall have the right, with the prior written approval of the Executive Board of the Association, to redesignate, as part of a Unit or as a Limited Common Element, any portion of the Common Elements or any walls, floors or other separations between the affected Units, which may be necessary or appropriate to accomplish such combination or division; provided however, that the exercise of the rights granted herein shall be subject to the prior written consent of any First Mortgagee having an interest in any such combined or divided Units. If Units are combined, the undivided interest in the Common Elements appurtenant to the combined Unit shall be the sum of the undivided interests in the Units that were combined. Any previously-combined Units which are later divided shall be reinstated to the undivided interests in the Common Elements which they had prior to the combination. An amendment to the Declaration and Map implementing a combination or division under this Section shall be executed and filed in accordance with the Act.

(b)            Notwithstanding any other provision of this Section 2.4, Declarant shall have, as part of its development rights, the right to combine and divide Units, or any part thereof, except that no consent will be required from the Association, the Executive Board or any other person for Declarant to exercise such rights and any amendment to this Declaration or the Map that is required to implement such combination or division may be executed solely by Declarant. Declarant's development rights set forth above shall terminate on the first to occur of (1) the tenth (10th) anniversary of the date this Declaration is recorded or (2) the date of the conveyance of the last Unit by Declarant to the first purchaser thereof (other than Declarant).

ARTICLE 3  
CONDOMINIUM MAP

ARTICLE 3.1        Recording. The Condominium Map shall be recorded in the office of the Clerk and Recorder of the County prior to conveyance of the first Condominium Unit shown on such Condominium Map.

ARTICLE 3.2        Content. The Condominium Map shall depict and show all items required under the Act, including but not limited to: the legal description of the land and a survey thereof; the location of the Building(s) with reference to the exterior boundaries of the land; the floor and elevation plans; the location of the Units within each respective Building, the location of the Common Elements, both horizontally and vertically; and the Condominium Unit designations. The Condominium Map shall contain the certificate of a registered professional engineer, licensed architect or registered land surveyor certifying that the Condominium Map substantially depicts the location and the horizontal and vertical measurements of the aforesaid information. When interpreting the Condominium Map, the existing physical boundaries of each Unit, as constructed, shall be conclusively presumed to be its boundaries.

ARTICLE 3.3        Amendments. Declarant hereby reserves unto itself the right, from time to time, without obtaining the consent or approval of any Owner or First Mortgagee, to amend any Condominium Map in order to conform such Condominium Map to the actual location of any improvement(s) constructed, installed or erected on the Real Estate, or to establish and designate any General Common Elements as Limited Common Elements. The rights accorded to Declarant in this Section 3.3 shall expire on the date of conveyance of the last Condominium Unit by Declarant to the first purchaser thereof (other than Declarant), or ten (10) years after this Declaration is recorded, whichever occurs first. The Condominium Map may also be amended, from time to time, as provided in Section 2.4 hereof or in accordance with the provisions of this Agreement or the Act relating to amendments to the Declaration.

#### ARTICLE 4 OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS

ARTICLE 4.1        Rights of Ingress and Egress. Every Owner, tenant and their respective family members, guests, invitees and licensees shall have a right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to such Owner's Condominium Unit, plus a right and easement of ingress and egress over, across and upon the General Common Elements and those Limited Common Elements appurtenant to such Owner's Condominium Unit, for the purpose of entering and exiting such Owner's Condominium Unit, parking areas, any recreational facilities and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Condominium Unit; provided, however, that such rights and easements shall be subject to the following:

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



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(b) The right of the Association to suspend the voting rights and any and all rights of any Member to the use of any recreational or other facilities for any period during which any Association assessment against such Member or against such Member's Condominium Unit remains unpaid and, for any period of time which the Association may deem to be appropriate, for such Member's infraction, or the infraction by any Owner's tenant, or such Member's or tenant's guests, licensees or invitees, of any rule or regulation of the Association; and

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

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

ARTICLE 4.2 Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to that Owner's Condominium Unit. No Limited Common Element may be used or enjoyed by any person not an Owner of a Unit to which that Limited Common Element is appurtenant, without the approval of such an Owner.

ARTICLE 4.3 Major Recreational Facilities. No major recreational facilities are planned to be built by Declarant on the Real Estate.

ARTICLE 4.4 Declarant's Responsibility for Completion of Common Elements. Declarant shall be responsible at its own sole cost and expense to complete the installation of all service utility lines to each individual condominium unit, the building core and shell, all drainage facilities, all common paved driving and walkway surfaces and landscaping as required by the development approval for Lot 2 granted by the City of Glenwood Springs. All of the foregoing shall be conveyed by Special Warranty Deed to the Association at the time of the recording of the Condominium Map.

ARTICLE 4.5 Reserved.

ARTICLE 4.6 Signage. Notwithstanding any provision of this Declaration to the contrary, any Owner of a Unit or Units may erect and maintain signs adjacent to or within the Unit owned by that Owner, and on any Common Elements provided that the existence and operation of the sign on any Common Element shall not hinder or otherwise interfere with the design or use of the affected Common Elements and that any such sign shall comply with Midland Center Architectural Standards, as adopted. All signs will comply with all applicable

codes and ordinances of the City of Glenwood Springs. Any sign erected pursuant to this Section shall be considered the personal property of the Owner who erected it, and that Owner shall be required to adequately maintain and insure that property, including adequate liability insurance.

## ARTICLE 5

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

ARTICLE 5.1        Membership. Every Owner of a Condominium Unit shall be a Member of the Association and shall remain a Member throughout the period of his ownership of a Condominium Unit. Each Unit shall be entitled to the votes described in Exhibit B hereof to be exercised by the Owner or Owners thereof; provided that a Unit resulting from combining Condominium Units shall have a number of votes equal to the sum of the votes provided to the Owners of the original Units (i.e., Units which exist as of the date this Declaration is filed in the real property records of the County) included in the combined Unit

ARTICLE 5.2        Executive Board. The affairs of the Association shall be managed by an Executive Board.

(a)                The Executive Board shall consist of the number of members stated herein, or which is set forth in the Association's Articles of Incorporation ("Articles"), or Bylaws ("Bylaws"), as each may be amended from time to time. From the date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Executive Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of 75% of the Condominium Units in the Project to Owners other than Declarant, two (2) years after the last conveyance of a Condominium Unit by Declarant in the ordinary course of business, or three years after the first sale of a Condominium Unit to an Owner other than Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant's control, but in that event, Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of 25% of the Condominium Units in the Project to Owners other than Declarant, at least one member and not less than 25% of the members of the Executive Board will be elected by Owners other than Declarant. Not later than sixty (60) days after the conveyance of 50% of the Condominium Units in the Project to Owners other than Declarant, not less than 33-1/3% of the members of the Executive Board will be elected by Owners other than Declarant. Not later than the termination of Declarant's control as provided above, the Owners (including Declarant) shall elect the Executive Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated



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representatives of Owners other than Declarant and the Executive Board shall elect the officers, with such Board members and officers to take office upon termination of the period of Declarant's control.

## ARTICLE 6 THE ASSOCIATION

### ARTICLE 6.1      Management and Maintenance Duties.

(a)            Subject to the rights of Owners as set forth in this Declaration, the Association shall:

- (i)            be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements and any property owned by the Association, including facilities, furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner shall be responsible for exclusive maintenance, repair and replacement of all fixtures, equipment and utilities installed or located within such Owner's Unit, and all other equipment providing exclusive service thereto or therefor and any service lines from such equipment to the condominium unit, including without limitation all utility, heating, plumbing, air conditioning, and domestic hot water equipment and appurtenances, but only to the extent such fixtures, equipment and utilities are owned by said Owner; and
- (ii)           maintain all grass, trees, shrubbery, flowers and other landscaping, if any, constituting part of the Common Elements.

(b)            The expenses, costs and fees of such management, operation, maintenance, repair, replacement and improvement by the Association, as provided in this Section 6.1 shall be part of the monthly common expense assessment levied by the Association; provided that the Association may levy the expenses associated with any of the following as an individual purpose assessment pursuant to Section 7.8(b) against the Owner of the Unit or Units involved: expenses for operating, maintaining, repairing, replacing or improving Limited Common Elements set forth in Section 1.14, expenses of maintaining, repairing, and replacing all fixtures, equipment and utilities which are Common Elements but provide exclusive service to such owner's Unit(s) and any service lines from such equipment to the Unit(s), including without limitation all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances. Except for the Owner's right to reject a budget as described in Section 7.3, the prior approval of

the Owners shall not be required in order for the Association to pay any such expenses, costs and fees.

(c) If any Owner, agent or representative of an Owner, or employee of the Association controls or disburses funds belonging to the Association, the Association shall obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the Association. Any person employed as an independent contractor by the Association for the purpose of managing the Project, or any part thereof, must obtain and maintain fidelity insurance in an amount not less than the amount specified in subsection (10) of 38-33.3-313, C.R.S., unless the Association names such person as an insured employee in a contract of fidelity insurance, as stated above in this subsection 6.1(c).

(d) Notwithstanding anything in this Article 6 to the contrary, the Owner or Owners of any Unit, or any employee, agent or designee acting at the direction of such Owner, is authorized to act as the agent of the Association for the limited purpose of maintaining and replacing, if necessary, all exterior lighting fixtures installed on or around the Building, including the replacement of light bulbs. The Owner shall collect from the Association the actual cost of all work carried out under this subsection (d), which cost will be a common area expense, allocable to all Owners.

ARTICLE 6.2      Owner Negligence: Prohibition of Certain Activities.

(a) Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, an Owner's tenant or by any member of an Owner's or tenant's family or by an Owner's or tenant's guests, invitees or licensees or concessionaires, or as a result of any improvement constructed by an Owner in or upon the Limited Common Elements then the expenses, costs and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount of such expenses, costs and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a default assessment determined and levied against such Condominium Unit.

(b) Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements, or any part thereof shall be committed by any Owner or Owner's tenant, or by any member of an Owner's or tenant's family, or by a guest, invitee, licensee or concessionaire or



contract purchaser of any Owner or Owner's tenant. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by him, his tenant or the members of his or his tenant's family, his or his tenant's guests, invitees, licensees or contract purchasers, which is in violation of this Section 6.2, including but not limited to any improvements constructed by an Owner in or upon the Limited Common Elements. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), then the amounts to be indemnified shall be and constitute a default assessment determined and levied against the Owner's Condominium Unit.

ARTICLE 6.3        Management Agreements and Other Contracts. The Association may have professional management of its business affairs. Any agreement for professional management of the Association's business or any other contract providing for services of Declarant shall have a maximum term of one (1) year and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

ARTICLE 6.4        Acquiring and Disposing of Real and Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners and related to the Project, tangible and intangible personal property and real property for such uses and purposes as the Executive Board of the Association may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Condominium Unit. Transfer of a Condominium Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal and/or real property without any reference thereto. Each owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Executive Board of the Association in its sole discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

ARTICLE 6.5        Promulgation of Rules and Regulations. The Executive Board and the Association may promulgate and enforce, including, without limitation, enforcement by levying and collecting charges or fines for the violation thereof, reasonable rules and regulations governing the use of the Units, Common Elements and any property owned by the Association, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

ARTICLE 6.6        New Additions to Common Elements. The Association shall have the right to construct additions to the Common Elements. Ownership of any such additions to the Common Elements shall be apportioned among all Condominium Units in proportion to the

respective undivided interest in the Common Elements appurtenant thereto, as shown on Exhibit A attached hereto, and shall be governed by this Declaration. The common expenses of any such additions to the Common Elements shall be apportioned among all Condominium Units as provided in Section 7.2 hereof.

ARTICLE 6.7      Specific Association Obligations. Without limiting any other powers or obligations of the Association as provided in this Declaration, the Association shall be responsible for repair and maintenance of water and sewer utilities which serve the building and for the cost of regular inspection and maintenance of the fire notification and protection systems serving the building. The cost of performing such obligations shall be a Common Expense to be apportioned and levied in accordance with the provisions of this Declaration.

## ARTICLE 7 ASSESSMENTS

ARTICLE 7.1      Personal Obligation for Assessments. All Owners covenant and agree, and shall be personally obligated, to pay to the Association: (a) monthly common expense assessments imposed by the Association to meet the common expense and reserve requirements of the Association; (b) special assessments, pursuant to Section 7.7 of this Declaration; (c) individual purpose assessments, pursuant to Section 7.8 of this Declaration; and (d) other charges costs, interest, fees and assessments, including without limitation default assessments, as provided in this Declaration. The payment of any and all assessments is an independent covenant, with all assessments payable in full, when due, without notice (except as otherwise expressly provided in this Declaration) or demand, and without set off or deduction. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of his Unit. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Condominium Unit, as well as all charges for separately metered utilities servicing his Condominium Unit. The charges for utilities which are not separately metered to an individual Condominium Unit by the applicable utility company may be collected by the Association as part of the common expense assessments; however, the charges for such utilities shall be allocated among the Condominium Units based on actual usage, if such is measured.

ARTICLE 7.2      Allocation of Expense. To the greatest extent reasonably possible, all expenses will be billed directly to individual Unit Owners by means which separately measure the costs incurred at, or attributable to, each Unit. These methods will include separate meters, if practicable. Utility costs associated with usage and maintenance of any exterior lighting shall be metered separately, if reasonably possible.

(a) All assessments for other common expenses (other than individual purpose assessments and default assessments) will be allocated among the Condominium Units in the fractional proportions set forth in Exhibit B; provided that for the purpose of calculating its share of the assessments any combined Condominium Unit will be treated as being the number of original Condominium Units (i.e. those Condominium Units which exist as of the date this Declaration is filed in the records of the County) which make up that combined Condominium Unit.

ARTICLE 7.3      Assessments for Common Expenses; Budgets.

(a) Until the Association makes a common expense assessment, Declarant shall pay all common expenses. After any assessment has been made by the Association, assessments shall be payable monthly with the amount of the assessments to be determined by the Executive Board from time-to-time (but no less frequently than annually) based on the budget adopted by the Association. The Executive Board of the Association shall prepare each proposed budget to provide for the payment of all estimated expenses, costs and fees for the duties described in Section 6.1 of this Declaration and for other costs, fees and expenses, related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration and improvement of the Project, the Common Elements real or personal property owned by the Association, and any other obligations which may be undertaken by the Association. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of the common grounds; common lighting and heating maintenance, repair, replacement and renovation of the Common Elements; wages; charges for utilities; taxes, legal and accounting fees; management fees; costs, expenses and liabilities incurred by the Association's Executive Board on behalf of the Owners or otherwise arising under or by reason of this Declaration, the Articles of Incorporation or Bylaws of the Association; the creation of reasonable reserves, working capital and/or sinking funds; reimbursement for or payment of any operating deficit, loss, or unbudgeted expense incurred by the Association; and any and all other costs and expenses relating to the Common Elements, real or personal property owned by the Association, and/or any other obligations undertaken by the Association.

(b) Within 30 days after adoption of any proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider ratification of the budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

ARTICLE 7.4      Reserve. The Association shall establish an adequate reserve fund for the maintenance, repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced, and for payment of insurance deductibles. Such reserves shall be included in the budget and funded through the monthly common expense assessments. Until such time as 50% of the entire square footage of the Units has been sold, Declarant shall be not be responsible for payment of that portion of the monthly assessment on any unsold Units which is attributable to the reserve fund included in the budget.

ARTICLE 7.5      Date of Payment of Monthly Common Expense Assessment. The monthly common expense assessment shall be due and payable on the first day of each month, in advance, or on such other dates, and with such frequency (but no less frequently than annually), as may be set by the Executive Board of the Association from time to time. Any person purchasing a Unit between monthly assessment due dates shall pay a pro rata share of the last assessment due.

ARTICLE 7.6      Rate of Assessment. Both monthly common expense and special assessments shall be fixed at such rates as will be sufficient to meet the advance budget of the Association, as provided in Sections 7.3 and 7.7 hereof.

ARTICLE 7.7      Special Assessments. In addition to the monthly common expense assessments authorized above, the Executive Board of the Association may, at any time, and from time to time, determine, levy and assess a special assessment for the purpose of defraying, in whole or in part, payments for any operating deficit, loss or unbudgeted expense, and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Common Elements including without limitation any fixtures and personal property related thereto. Special assessments shall be based on a budget adopted in accordance with Section 7.3; provided that if necessary, the Association may adopt a new budget pursuant to Section 7.3 prior to levying a special assessment. Such special assessment(s) shall be due and payable as determined by the Association's Executive Board.

ARTICLE 7.8      Individual Purpose Assessments.

- (a) In addition to the common expense and special assessments as hereinabove provided, the Executive Board of the Association may, at any time, and from time to time, determine, levy and collect assessments against any one or more, but fewer than all, of the Condominium Units, for any matters of maintenance of repair, replacement or improvement reasonably applicable only to such Condominium Units or to any Limited Common Element appurtenant to that Unit or Units. Such individual purpose assessments may be levied against individual Condominium Units to pay or reimburse the Association for any costs, expenses, fees, and other charges, incurred or reasonably anticipated to be incurred by the Association, for maintenance, repair, replacement and improvement, or any other purpose, of or with respect to the

Condominium Unit against which such individual purpose assessment is levied which are not applicable to all the Condominium Units.

(b) The amounts determined, levied and assessed pursuant to this Section 7.8, shall be due and payable as determined by the Executive Board of the Association provided that written notice setting forth the amount of such individual purpose assessment for each Condominium Unit and the due date(s) for payment thereof shall be given to the Owners of their affected Condominium Units not less than thirty (30) days prior to the due date.

ARTICLE 7.9      Lien for Assessments.

(a) Under the Act, the Association has a statutory lien on a Condominium Unit for assessments and for fines imposed against its Owner from the time each assessment or fine becomes due. In addition, fees, charges, late charges, attorneys fees, fines and interest charged pursuant to this Declaration or the Act are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) The statutory lien for assessments is prior to all other liens and encumbrances on a Condominium Unit except: (i) liens and encumbrances recorded before the recordation of this Declaration; (ii) a lien of a First Mortgage which was recorded before the date on which the assessment sought to be enforced become delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Condominium Unit. Notwithstanding the foregoing, the statutory lien for assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the common expense assessments based on a periodic budget adopted by the Association pursuant to Section 7.3 which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action to enforce the statutory lien.

(c) The recording of this declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or assessment is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner and his Condominium Unit as a default assessment.

ARTICLE 7.10      Effect of Non-Payment of Assessments. Any assessments, charges, costs or fees provided for in this Declaration, including, without limitation, any default assessment arising under any provision of this Declaration, which are not fully paid within ten (10) days after the due date thereof, will bear interest from the due date at twenty-one percent (21%) per annum, or at such other rate as may be set by the Association from time to time (subject to any

limits imposed by law), and the Association may assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges, costs or fees, and may also proceed to foreclose its lien against such Owner's Unit in the manner of a mortgage upon such property. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges costs or fees, may be commenced and pursued by the Association without foreclosing or in any way in waiving the Association's lien therefor. In the event that any such assessment, charge, cost or fee, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or cross claim for such relief in any action) against an Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Unit, then all unpaid assessments, charges and fees, any an all late charges and accrued interest under this Section 7.10, the Association's costs, expenses and reasonable attorney or attorneys fees incurred in collection efforts, and the Association's costs of suit, expenses and reasonable attorney or attorneys fees and other professional fees incurred for any such action and/or foreclosure proceedings, and any other costs which may be authorized by a court of competent jurisdiction shall be taxed by the court as part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. In any action brought by the Association (or counterclaim or cross claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver for the Unit to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The Court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's common expense assessments.

ARTICLE 7.11      Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Condominium Unit shall not affect the personal obligation of the Owner for the payment of assessments, charges, costs or fees levied hereunder, or the lien for assessments, charges costs or fees levied hereunder, except that sale or transfer of a Condominium Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Association assessments, charges, fees and costs, which become due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, or any proceeding in lieu thereof, except to the extent the lien of the Association has priority over the First Mortgagee under Section 7.9; provided, however, that any such assessments, charges, costs or fees which are extinguished as provided herein may be reallocated and assessed to all Units as a common expense. Further, no First Mortgagee shall be personally liable for any unpaid assessments, charges, costs or fees, or portion thereof, accruing

against a Unit prior to the time such First Mortgage takes title to such Unit pursuant to any remedy provided in its First Mortgage or by law. The sale, transfer, foreclosure or any proceeding in lieu of a foreclosure of a Condominium Unit, shall not relieve the person or entity who becomes an Owner by reason of such sale, transfer, foreclosure or any proceeding in lieu thereof, from liability for any assessments, charges, costs or fees, or any portion thereof, becoming due after such sale, transfer, foreclosure, or any proceeding in lien thereof, and such Condominium Unit shall be subject to the lien for such subsequent assessments, charges, costs and fees.

ARTICLE 7.12      Homestead Waiver. The Association's lien on a Condominium Unit for assessments, charges, costs and fees, provided for herein, shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Condominium Unit shall constitute a waiver of the homestead exemption against all such assessments, charges, costs and fees.

ARTICLE 7.13      Working Capital Fund. The Association or Declarant shall require the first Owner of each Unit to make at the time of purchase a contribution to the Association in an amount equal to two (2) times the monthly common expense assessment against that Unit in effect at the closing thereof for deposit in a working capital fund. At the time Declarant's control of the Association terminates, Declarant shall transfer control of the working capital fund to the Association (if not transferred earlier) and in addition will pay the Association an amount equal to two times the monthly common expense assessment against all Units then owned by Declarant (unless such payment has previously been made with respect to any such Units). Amounts paid into the working capital fund should not be considered as advance payments of regular assessments. Funds in the working capital account shall be segregated with other such working capital funds for the use and benefit of the Association, including without limitation to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution to working capital funds shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Unit, an Owner (including Declarant if he previously paid working capital funds for the sold Unit) shall be entitled to a credit from his transferee (but not from the Association) for the unused portion of the contribution to the working capital fund. Declarant shall not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

ARTICLE 7.14      First Mortgagees May Pay Assessments and Cure Defaults. If any assessment on a Condominium Unit shall not be paid by the Owner thereof within thirty (30) days after the same is due, or upon a default by any Owner of any provision of this Declaration, the Articles of Incorporation or Bylaws of the Association, shall not be cured within thirty (30) days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such assessment, together with any other amounts secured by the Association's lien created by this Article 7 and may (but shall not be required to) cure any such default.

ARTICLE 7.15 Statement Regarding Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the amount of any unpaid assessments currently levied against such Owner's Condominium Unit. The statement shall be furnished within 14 business days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner or holder of a Security Interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Condominium Unit for unpaid assessments, which were due as of the date of the request.

ARTICLE 7.16 Liens. In accordance with the requirements of the Act, as amended, Declarant hereby states that it is possible that liens other than mechanics' liens and assessment liens may be obtained against the Common Elements, including without limitation, judgment liens, and purchase money mortgage liens.

## ARTICLE 8 INSURANCE AND INDEMNIFICATION OF ASSOCIATION

ARTICLE 8.1 Insurance on Common Elements. Commencing not later than the time of the first conveyance of a Condominium Unit to a person other than Declarant, the Association shall maintain the following types of insurance for the benefit of the Owners to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements contained in this Article 8, the Association may also consider, in determining the types and amounts of insurance it needs to obtain, the then-existing requirements of the Agencies with respect to their insurance, guaranty, or purchase of First Mortgages.

- (a) A policy of property insurance covering all insurable improvements located within the Project (including the Units, but not including furniture, HVAC equipment, wall trimmings, improvements, additional or other personal property supplied or installed by Owners) except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement," an "Agreed Amount Endorsement," and if the Project has central heating or air conditioning a "Steam Boiler and Machinery Coverage Endorsement" with minimum coverage per accident equal to the lesser of \$2 million or the insurable value of



the Building(s). The Association will also purchase endorsements, and/or coverage on personal property owned by the Association, including fixtures and building service equipment, furnishings, common personal property and supplies. Such insurance shall afford protection against at least the following:

- (i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
  - (ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.
- (b) A comprehensive policy of public liability insurance covering the Project insuring the Association in an amount not less than One Million dollars (\$1,000,000) covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Project, legal liability arising out of lawsuits related to employment contracts of the Association and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, comprehensive automobile liability insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, worker's compensation insurance for employees of the Association and such other risks as may customarily be required by private institutional mortgage investors with respect to condominium projects similar in construction, location and use.
- (c) a policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, in the custody of the Association at any given time. Such fidelity coverage or bonds shall meet the following requirements:
- (i) all such fidelity coverage or bonds shall name the Association as an obligee;
  - (ii) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association shall require the managing agent

to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) A policy providing personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

(e) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available.

ARTICLE 8.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. The policy or policies shall contain a standard noncontributory First Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of a First Mortgage under the Declaration. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees under the Declaration, upon request. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner unless acting within the scope of such Owner's authority on behalf of the Association. The policies shall also contain a waiver by the insurer of any right to claim by way of subrogation against the Owners, Declarant, the Association, and their respective officers, directors and members and any of such parties' respective families, agents, employees or tenants. The liability insurance policy provided for under Section 8.1(b) shall insure the Executive Board, the Association, any management agent and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner and Member of the Board. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. Such liability insurance shall cover claims of one or more insured parties against the other insured parties.

ARTICLE 8.3 Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of \$10,000 or 1% of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be a common expense shared by all the Owners. Notwithstanding the foregoing, after notice and hearing (as described below), the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, and assess such loss as a default

assessment against such negligent Owner and his Unit, subject to all provisions of this Declaration applicable to such assessments. The Association shall notify each Owner who will be subject to the proposed assessment, at least 30 days in advance of the proposed date, that a hearing shall be held before the Executive Board of the Association for the purpose of deciding whether such an assessment against the Owner is warranted. At the hearing, each affected Owner shall have the right to present relevant evidence to the Executive Board, which shall decide the issue based on its reasonable appraisal of the facts.

ARTICLE 8.4        Insurance Trustee. The Executive Board shall have authority to authorize an insurance trustee to assist and consult with it and/or act as its agent and attorney-in-fact for one or more of the following purposes: to purchase and maintain the insurance required under this Declaration, to negotiate and compromise settlement of losses under any insurance; and to collect the proceeds from any insurance, hold such proceeds in trust for the Owners and their First Mortgagees as their interest may appear and dispose of such proceeds as provided in Article 13 of this Declaration and in the Act.

ARTICLE 8.5        Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of such Owner; provided that if such amount(s) are not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount(s), from time to time, then the failure to so repay shall automatically become a default assessment determined and levied against such Unit and Owner.

ARTICLE 8.6        Acceptable Insurance Companies. Any hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports (or a comparable rating by any successor or generally accepted substitute for Best's) of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the state of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Executive Board, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

ARTICLE 8.7        Insurance to be Maintained by Owner.  
(a) Insurance coverage on furnishings, including carpet, draperies, oven range, refrigerator, HVAC equipment for the Unit, wallpaper and other items of personal property belonging to an Owner, and public liability coverage within each Condominium

Unit, shall be the sole and direct responsibility of the Owner(s) thereof. The Association, its Executive Board and/or the managing agent of the Association shall have no responsibility for such insurance coverage; provided, however, that the Executive Board of the Association may elect to include any such coverage in any Association policy and any costs of such coverage not allocable to the Owners on a uniform basis shall be assessed as an individual purpose agreement.

(b) Each Owner shall also maintain:

- (i) special form coverage on a replacement cost basis for the improvements and betterments in any Unit;
- (ii) coverage for any act or omissions of Owner or Owners of the Unit, its agents, contractors, employees, servants, licensees, successors or assigns; the Tenant shall maintain, Public Liability Insurance on all-occurrence basis, with minimum amounts of liability in an amount of One Million Dollars (\$1,000,000) for bodily injury, personal injury, or death with respect to any one person, and Two Million Dollars (\$2,000,000) for bodily injury, personal injury, or death with respect to any one accident; and
- (iii) all outside plate glass in the Unit.

(c) Any and all insurance procured by an Owner or Owners as herein required shall be issued in the name of said Owner or Owners and in the name of the Association by a company licensed to do business in the State of Colorado where the Project is located, and in the event of payment of any loss covered by such policy, the Association shall be paid first by the insurance company for its loss; and the Owner or Owners waive their right of subrogation against the Association for any reason whatsoever (any insurance policies herein required to be procured by the Owner or Owners shall contain an express waiver of any right of subrogation by the insurance company against the Association).

(d) Certificates evidencing the insurance coverage required herein shall be submitted by the insurance company to the Association within ten (10) days of the effective date of any policy. The minimum limits of any insurance coverage required herein shall not limit an Owners' liability for indemnification of Landlord hereunder.

(e) No Owner shall do anything in or about the Project that may be prohibited by the Association's or any Owner's insurance policies or any endorsements or forms attached thereto, or that will increase any insurance rates and premiums on the Project or any Unit therein.



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ARTICLE 8.8      Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such appraisal upon request.

ARTICLE 8.9      Notice of Cancellation. If any insurance required by this Article 8 to be obtained by the Association is not reasonably available or is canceled or not renewed without a replacement policy having been obtained, the Association shall promptly cause notice of that fact to be hand delivered or sent by prepaid first-class U.S. Mail to all Owners.

ARTICLE 8.10      Indemnification of Association.

(a) Each Owner shall indemnify the Association and hold it harmless from suits, actions, damages, liability and expense, loss of life, bodily or personal injury, or property damage arising from, or out of the use or occupancy of, any Unit or any part thereof, or occasioned wholly or in part by any act or omission of an Owner, its agents, contractors, employees, servants, invitees, licensees, or concessionaires, including the sidewalks and common areas and facilities within the Project, except in the case of negligence on the part of the Association or its agents or employees.

(b) The Association shall not be responsible or liable to any Owner for any defect, latent or otherwise, in the Project or in any of the equipment, machinery, utilities, appliances, or apparatus therein, nor shall it be responsible or liable for any injury, loss, or damage to any person or to any property of any Owner or other persons caused by or resulting from bursting, breakage or by or from leakage, steam or snow or ice, running, backing up, seepage, or the overflow of water or sewerage in any part of said premises, or for any injury or damage caused by or resulting from any defect or act or omission in the occupancy, construction, operation, or use of the Project, or any part thereof, resulting to any person.

## ARTICLE 9 CONVEYANCES AND TAXATION OF CONDOMINIUM UNITS

ARTICLE 9.1      Contracts Entered Into Prior to Recording of Condominium Map and Declaration. A contract or other agreement for the sale of a Condominium Unit entered into prior to the filing for record of the Condominium Map and/or this Declaration in the office of the Clerk and Recorder of the County, may legally describe such Condominium Unit in the manner



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set forth in Section 9.2 hereof and may indicate that the Condominium Map and/or this Declaration are to be recorded. Upon recordation of the Condominium Map and this Declaration in the County, such description shall be conclusively presumed to describe the corresponding Condominium Unit shown on the Condominium Map and such Condominium Unit shall be subject in all respects to this Declaration.

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

Condominium Unit\_\_\_\_\_, Midland Center Lot 2  
Condominiums, according to the Condominium Map thereof  
recorded \_\_\_\_\_, 20\_\_, as Reception No.\_\_\_\_\_  
in the records of the Clerk and Recorder of the County of Garfield,  
Colorado and as defined and described in the Condominium  
Declaration for Midland Center Lot 2 Condominiums recorded \_\_\_\_\_  
\_\_\_\_\_, 20\_\_, as Reception No.\_\_\_\_\_ in  
said records.

**ARTICLE 9.3**      Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit which legally describes said Condominium Unit substantially in the manner set forth in Section 9.2 hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Condominium Unit, including the undivided interest in the Common Elements appurtenant thereto and all other appurtenant properties and property rights, and incorporate all of the rights, limitations and burdens incident to ownership of a Condominium Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Condominium Unit and the use of all the General Common Elements as well as all of the Limited Common Elements appurtenant to said Condominium Unit, all as more fully provided in this Declaration.

**ARTICLE 9.4**      Taxation. Each Condominium Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act. For the purpose of such assessments, the valuation of the Common Elements shall be apportioned among the Condominium Units in proportion to the Tax Assessor of the County, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

## **ARTICLE 10**

## MECHANIC'S LIENS

ARTICLE 10.1      Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated in any Condominium Unit with the consent or at the request of the Owner thereof, his agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the Owner's Condominium Unit. No person or entity performing labor and/or supplying material to the holder of a leasehold interest in any Unit shall have the right to encumber, by way of a mechanic's lien, anything other than the rights held by the lessee pursuant to the lease.

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

ARTICLE 10.3      Effect of Partial Payment. In the event a lien attributable to labor performed and/or materials furnished on the Project, or any portion thereof, is effected against two or more Condominium Units, the Owner(s) of any of the affected Condominium Units may pay to the lienholder the amount of the lien attributable to such Owner's Condominium Unit and the lienholder shall release such Condominium Unit from the lien. The amount required to be paid by any such Owner in order to obtain release of his Condominium Unit from any such lien shall equal to the square footage of the Unit as a percentage of the total square footage which was the subject of the work from which the lien arises. Partial payment and release of any such lien with respect to any Condominium Unit(s) shall not prevent the lienholder from enforcing his rights against any Condominium Unit for which payment has not been received.

## ARTICLE 11

## EASEMENTS

ARTICLE 11.1 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Real Estate, and all portions thereof, shall be subject to the easements as shown on any recorded plat of the Real Estate, or any portion thereof, and as shown on the recorded Condominium Map.

ARTICLE 11.2 Encroachments. In the event that any portion of the Common Elements encroaches upon any Unit(s) or in the event that any portion of a Unit encroaches upon any other Unit(s) or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (i) settling of the Building(s), or (ii) alteration or repair to the Common Elements, or (iii) repair or restoration of the Building(s) and/or Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement is hereby created and does exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one or more of the Units, Building(s) or other improvements comprising part of the Common Elements, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment is hereby created and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. When interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other security instruments relating to Units, the actual location of 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 as indicated on the Condominium Map.

ARTICLE 11.3 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

ARTICLE 11.4 Utilities. There is hereby created a blanket easement upon, across and through the Common Elements for the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the earlier of five



(5) years after recordation of this Declaration in the County or conveyances by Declarant of the last Condominium Unit to the first Owner thereof (other than Declarant), at which time said reserved right shall vest in the Association. The easement provided for in this Section 11.4 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

ARTICLE 11.5      Maintenance Easement. An easement is hereby granted to the Association, its officers, directors, agents, employees and assigns upon, across, over, in and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association. Each Owner shall have an easement upon, across, over, in and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to install, maintain, repair, replace, dispose or otherwise make use of equipment, including that providing heating, ventilation, or air conditioning, which (1) exclusively serves, or will exclusively serve, such Unit; or (2) serves, or will serve, the Unit and at least one other Unit. To utilize a maintenance easement pursuant to subsection (2) in the preceding sentence, an Owner must first request the Association to install, maintain, repair, replace, dispose or otherwise make use of the equipment within the easement, and allow the Association a reasonable period of time to carry out the requested activity. In the event of any emergency, any Owner may utilize a maintenance easement as described above without the need to first make a request to the Association and allow it an opportunity to perform. The determination of an emergency shall be at the sole reasonable discretion of the Owner.

ARTICLE 11.6      Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Real Estate for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Real Estate so as to improve the drainage of water on the Real Estate.

ARTICLE 11.7      Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within a Unit(s) or may be conveniently accessible only through a Unit(s). The Owners of other Unit(s) and the Association shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements or any utility lines or pipes which are not Common Elements, located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Subject to the provisions of Section 6.2, and 6.2(b) hereof, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repairs within any Unit at the instance of the Association, shall be an expense of all the Owners

apportioned in accordance with Section 7.2. Damage to the interior part of any Unit resulting from the installation, movement, repair, emergency repair, removal or replacement of any utility lines or pipes not servicing more than one Condominium Unit shall be the expense of the Owner whose Unit such utility lines and pipes serve and such expense may be reimbursed through an Individual Unit Assessment. To the greatest extent reasonably possible, the Association or any Owner shall arrange a mutually agreeable time with the affected owner to enter any Unit pursuant to this section. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours notice to the occupants of the Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergencies the occupants of the affected Unit shall be warned of impending entry as early as is reasonably possible.

ARTICLE 11.8      Construction Utility Easement. Each Owner shall have an easement in, upon, under and across the Common Elements for the construction and installation of any duct work, additional plumbing or other additional services or utilities in the Common Elements in connection with the improvement or alteration of any Condominium Unit. Each Owner shall further have an easement and right to install any duct work, additional plumbing or other additional services or utilities within an adjoining Owner's Unit and the right to repair and maintain such lines and pipes provided such installation occurs only within an area shown on the Condominium Map as "Utility Easement Area." Such "Utility Easement Area" is depicted in the burdened Unit and burdens the ceiling of such Unit. The "Utility Easement Area" is intended to allow the Unit Owner above the burdened Unit to gain access through the ceiling of the burdened Unit in the area depicted as the "Utility Easement Area." Prior to installing any such utility lines or pipes, the Owner through whose Unit the lines or pipes will be installed will be given at least ten (10) days prior notice of such installation.

ARTICLE 11.9      Declarant's Rights Incident to Completion of the Project. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental for the purpose of completing or improving the Project, discharging the Declarant's obligations under this Declaration or any other document related to the Project, promoting the sale of the Units or exercising the Declarant's special rights under Section 12.2; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, his family members, guests or invitees, to or of his Condominium Unit or the Common Elements. The rights of Declarant under this section shall terminate upon conveyance by Declarant of all Condominium Units to Owners other than Declarant or 10 years after the recording of this Declarant, whichever occurs first.

ARTICLE 11.10      Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 11, even though no specific reference to such easements or to this Article 11 appears in the instrument for such conveyance.

## ARTICLE 12 RESTRICTIVE COVENANTS

ARTICLE 12.1 Commercial Use. Subject to Section 12.2 hereof, Units shall be used for business, commercial or professional purposes only which are permitted within the zone district, including uses which are customarily incident thereto, and shall not be used at any time for residential purposes except as may be incidental or ancillary to the conduct of a business, commercial or professional enterprise (such as kitchen facilities used by employees of a business for the preparation of meals). This Section 12.1 may be amended only with the prior written consent of the City of Glenwood Springs.

ARTICLE 12.2 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Project, such facilities as Declarant deems reasonably necessary or incidental to the completion and sale of Condominium Units, specifically including without limiting the generality of the foregoing maintaining business offices, storage areas, signs, model units, sales offices, parking areas and lighting facilities. Declarant reserves the right to locate any sales office, management office or models in any Condominium Unit owned by Declarant. The rights retained by Declarant in this Section 12.2 shall terminate upon conveyance by Declarant of all Condominium Units to Owners other than Declarant or 10 years after the recording of this Declaration, whichever occurs first.

ARTICLE 12.3 Household Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Project, nor shall they be allowed to remain within any Unit overnight; provided however, that the Executive Board may, by rule or regulation, set the number of dogs or cats which may allowed within a Unit during the operating hours of the Building, so long as such dogs or cats are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to other Owners. The Association shall have and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of this Section 12.3, and to take such action or actions as it deems reasonably necessary to correct the same. An Owner's right to keep such household pets shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s), as well as any costs incurred by the Association as a result of such pet(s), and any such amounts shall be and constitute a default assessment subject to and enforceable by the Association in accordance with this Declaration.

ARTICLE 12.4 Use of Common Elements. Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the General Common Elements without the prior written approval of

the Association. Except for those improvements erected or installed by Declarant in its completion of the Project, and except as provided in Section 2.4 hereof, nothing shall be altered on, constructed in or removed from the Common Elements without the prior written approval of the Executive Board of the Association. Such approval will not be unreasonably withheld in respect to the installation of additional windows and balconies within or adjacent to a Unit and may be conditioned upon the Association's satisfactory review of plans for the alteration and the applying Owner's obtaining such insurance as is required by the Association, in its sole discretion. In reviewing any plans, the Association may engage the services of architects, attorneys and engineers and the cost of such services will be paid by the requesting party.

ARTICLE 12.5 Certain Work Prohibited by Owners. Except for those improvements erected, constructed or installed by Declarant in its completion of the Project, without the prior written approval of the Executive Board of the Association, no Owner shall:

- (a) make exterior additions to, alterations or decoration of the Building(s), including but not limited to any structural alterations to any Condominium Unit or Common Element, nor any changes in fences, hedges, walls or other structures, nor installation of window mounted air conditioning units or awnings or any exterior improvement of any type shall be commenced, erected, placed or maintained by the Owner of any Unit;
- (b) make alterations to the exterior portions of his Unit or of the roof, or to the Building or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith or remove any additions, improvements or fixtures from the building; except that an Owner may move any existing water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith provided that the functionality of any such pipe, conduit or fixture is not materially impaired by the move. This subsection (b) shall not apply to any sign of an Owner or to any structure providing venting exclusively to the Owner's Unit.
- (c) undertake any work in his Unit which would jeopardize the soundness or safety of the Building(s), reduce the value of the Project or impair any easement or hereditament thereon or thereto, nor shall any Owner enclose, by means of screening or otherwise, any balcony, yard, deck, patio or porch which is accessible from, associated with, and which adjoins a unit; and
- (d) make alterations to the exterior portions of his Unit or on the roof, or to the Building(s) or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith nor shall an Owner remove any additions, improvements or fixtures from the building.
- (e) Owner or owners may not alter, remove or modify the fire sprinkler system piping or the fire alarm wiring or devices in their unit or units. These systems



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shall only be worked on by contractors licensed to work on them by the State of Colorado and the City of Glenwood Springs. Permits to work on these systems shall be obtained from the Glenwood Springs Fire Department.

Notwithstanding the foregoing, an Owner may alter, remove or add partitions which are not load-bearing and which are located entirely within the walls, ceilings and floors forming and constituting the perimeter boundaries of his Unit, without the consent of the Association, unless the same would disrupt or impair utility service to other Unit or any General Common Element.

ARTICLE 12.6 Signs and Advertising. Except as provided in Section 4.6, no signs, advertising, billboards, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on any Residential Unit, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Association; provided however no approval is necessary for any sign which is part of the Common Elements. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by Declarant in connection with its sale of Condominium Units shall be permissible, provided that such use by Declarant shall not interfere with the Owners' use and enjoyment of the Common Elements, their Condominium Units, or their ingress and egress from a public way to the Common Elements or their Condominium Units. Nothing in this Section 12.7 shall be construed to limit or affect the right of the Owner of any Unit to erect and maintain any sign.

ARTICLE 12.7 Leases. The term "lease" as used herein shall include any agreement for the leasing or rental of a Condominium Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Condominium Unit shall have the right to lease his Condominium Unit under the following conditions:

- (a) All leases shall be in writing and a copy of the lease delivered to the Board of Directors of the Association or the Association's managing agent prior to the effective date of the lease. Any lease so delivered to the Association or its agent may be redacted to keep confidential its economic terms.
- (b) All leases shall provide that the terms of the lease and lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.
- (c) No lease shall be for less than six (6) months.

ARTICLE 12.8 Nuisances. No nuisance shall be allowed on the Project, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Project by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the completion of the Project,



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or of any use of the Unit that otherwise complies with applicable law. All parts of the Project shall be kept in a first-class condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.

### ARTICLE 13 DAMAGE, DESTRUCTION, TERMINATION, OBSOLESCENCE, OR CONDEMNATION

ARTICLE 13.1      Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of the Association as the attorney-in-fact of each Owner to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including, the repair, replacement and improvement of the Building(s), any Condominium Units, Common Elements or other portions of the Project which have been destroyed, damaged, condemned or become obsolete. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation, as is hereinafter provided. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact to deal with the Project upon its destruction, damage, obsolescence or condemnation, shall be appointed. Such appointment must be approved by the Owners representing an aggregate ownership interest of sixty-seven percent (67%) or more of the Common Elements and at least sixty-seven (67%) of the First Mortgagees (based upon one vote for each First Mortgage held).

#### ARTICLE 13.2      Termination of Condominium Project.

- (a)      The Condominium Project shall continue indefinitely unless and until it is terminated by the taking of all of the Condominium Units by eminent domain or by agreement of the Owners. For purposes of reaching agreement concerning the termination of the Condominium Project. No binding agreement shall exist to terminate the Condominium Project without the approval of at least sixty-seven percent (67%) of the votes allocated to the Owners and sixty-seven percent (67%) of the First Mortgagees (whose votes shall be allocated in identical percentages as provided to the Owner whose

Unit is encumbered by the First Mortgage). The Owners and the First Mortgagees must separately approve a Termination Agreement in the numbers recited above to authorize termination of the Condominium Project. The Termination Agreement must specify a date after which the Agreement will be void unless it is recorded before that date. The Termination Agreement and any ratification thereof must be recorded with the Clerk and Recorder of the County and shall be effective only upon recordation. After the recording of the Termination Agreement, the Project will be sold and the Association, on behalf of the Owners, may contract for such sale, but the contract is not binding on the Owners unless approved by the same vote of Owners and First Mortgagees required for approval of the Termination Agreement. After approval of the sale, the Association has all power necessary and appropriate to effect the sale and until the sale has concluded and the proceeds have been distributed, the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to the Owners and lienholders as their interest may appear, in accordance the provisions set forth below. Unless otherwise specified in the Termination Agreement, until title to the Project has been transferred pursuant to a sale, each Owner and its successors in interest have an exclusive right to occupancy of a portion of the real estate that formally constituted the Unit. During the period of that occupancy, each Owner and the Owner's successors in interest remain liable for all assessments and other obligations imposed upon the Owners by the Act or this Declaration. Following termination of the Condominium Project, the proceeds of any sale of real estate, together with any insurance proceeds (if the termination occurs in connection with a damage or destruction) and the assets of the Association are held by the Association as trustee for the Owners and the holders of the liens on the Condominium Units as their interest may appear.

- (b) The respective interest of the Owners is as follows:
- (i) except as provided in subparagraph (ii) below, the respective interests if the Owners are the fair market values of their Units, interest in the General Common Elements, and any Limited Common Elements before termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within 30 days after distribution by Owners holding at least 25% of the total votes in the Association. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Condominium Unit by the fair market value of all Condominium Units;
  - (ii) if any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interest of all Owners are their

respective interests in the Common Elements immediately before termination.

(c) The proceeds available for distribution to the holders of interest in the Condominium Units after a termination shall be allocated to each Condominium Unit in accordance with its proportionate interest as provided above and each Condominium Unit's share of such proceeds shall be deposited into a separate account identified by the Condominium Unit designation and the name of the Owner and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of such account, without contribution from one account to another, toward payment of the liens encumbering the Condominium Unit represented by such separate account, in the following order: (a) for the payment of taxes and special assessment liens in favor of any assessing entity; (b) for the payment of any Association common expense assessments which take priority over the lien of a First Mortgage pursuant to Section 7.9 of this Declaration and the Act; (c) for the payment of the lien of any First Mortgage; (d) for the payment of unpaid Association common expense assessments, other assessments, charges and fees, and all cost, expenses and fees incurred by the Association, including customary expenses of sale; (e) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (f) the balance remaining, if any, shall be paid to the Owner(s) of the Condominium Unit.

ARTICLE 13.3 Damage or Destruction. "Repair and Reconstruction" of the improvements, as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Condominium Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration, or replacement, in accordance with the provisions hereinafter set forth:

(a) Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds will be paid to the Association or an insurance trustee designated for such purpose and not to the holder of any Security Interest. The insurance trustee or the Association shall hold such insurance proceeds in trust for the Owners and lienholders as their interest may appear. Subject to the provisions of subparagraph (b) below, the proceeds must be disbursed first to the repair or restoration of the damaged property, and the Association. Owners and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated in accordance with Section 13.2. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, and such other matters of claims adjustment. The Association shall



have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvements. Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) Any portion of the Project for which insurance is required under this Declaration must be repaired or replaced promptly by the Association unless (i) the Condominium Project is terminated in accordance with Section 13.2, in which case the provisions of that Section apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) the Owners who hold 80% of the votes in the Association vote not to rebuild and every Owner of a Unit or assigned Limited Common Element that will not be rebuilt concurs; or (iv) prior to the conveyance of any Condominium Unit to a person other than 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.

(c) 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. 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.

ARTICLE 13.4 Obsolescence. Sixty-seven percent (67%) of the Owners may agree that the Common Elements are obsolete and 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 County, 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 aforesaid common expense assessment for the renewal and reconstruction of the Common Elements shall be a debt of each Owner and a lien on his Condominium Unit, and may be enforced and collected as provided in Section 7.9 and 7.10 hereof.

ARTICLE 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:



- (a) All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association.
- (b) 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 Executive Board of the Association the same as if there had been a termination of the Condominium 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 measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then 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 of 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.
- (c) Subject to the provisions of Article 16 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 his 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 the judicial decree. Notwithstanding anything to the contrary contained 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.

(d) 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 ratio in accordance with this Declaration according to the principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining 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.

(e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 13.3 hereof.

(f) 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. 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.

(g) Except as provided in subsection (f) 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 interest in the Common Elements whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides the Unit's interest in the Common Elements shall be reduced and determined by dividing the square footage of the remainder of the Unit by the total square footage of all Units in the Project after the taking, but the Unit's vote and share of assessments for common expenses shall remain the same. 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 BURDENS AND BENEFITS OF DECLARATION

ARTICLE 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.

ARTICLE 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 and all Owners 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 may 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 Act.

## ARTICLE 15 AMENDMENT OF DECLARATION

ARTICLE 15.1      Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

ARTICLE 15.2      Amendment. Except for amendments that may be executed by Declarant or by the Association under the provisions of this Declaration or of the Act, this Declaration, or any provision of it, may be amended at any time by Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose. If allowed such amendment may be approved under the provisions of Article 16 herein (relating to the rights of Mortgagees) and if the amendment to the Declaration add or delete any material provisions which establish, provide, for, govern or regulate any of the following:

- (a)            Voting;
- (b)            Assessments, Assessment liens or subordination of such liens,
- (c)            Reserves for maintenance or repair and replacement of the Common Elements;
- (d)            Insurance or fidelity bonds,
- (e)            Responsibility for maintenance and repair of the Project;
- (f)            Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;
- (g)            The interests in the Common Elements;

Except to the extent expressly permitted by the Act, no Amendment may create or increase any special Declarant's rights, increase the number of Units in the Project, or change the boundaries

of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners.

ARTICLE 15.3      Recording, Preparation of Documents. Every amendment to the Declaration and/or the Condominium Map must be recorded in the office of the Clerk and Recorder of the County and is effective only upon recording. Amendments to the Declaration required by this Article to be recorded by the Association shall be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association.

ARTICLE 15.4      Technical Amendment. To the extent allowed by the Act and notwithstanding any other provision of this Article 15, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, technical amendments to this Declaration, the Condominium Map, Articles of Incorporation and/or Bylaws of the Association, at any time prior to the conveyance of the last Condominium Unit by Declarant to the first Owner thereof (other than Declarant) or five (5) years from the date this Declaration is recorded in the County, whichever occurs first, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of this Declaration.

ARTICLE 15.5      Special Amendment. To the extent allowed by the Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, special amendments to this Declaration, the Articles of Incorporation and/or Bylaws of the Association, at any time prior to the conveyance of the last Condominium Unit by Declarant to the first Owner thereof (other than Declarant) or five (5) years from the date this Declaration is recorded in the real property records of the County, whichever occurs first, in order to comply with any reasonable requirement of any lender to make, purchase, sell, insure, or guarantee one or more First Mortgages.

ARTICLE 15.6      Recording of Amendments. To be effective, all amendments to or revocation or termination of this Declaration or the Condominium Map must be recorded in the office of the Clerk and Recorder of the County, and must contain evidence of the required approval thereof. The recordation of a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Condominium Units and the requisite percentage of First Mortgagees have given notarized written consent to the amendment shall satisfy the requirement of evidence of the required approval. The Secretary must further certify that originals of such written consents by Owners and First Mortgagees, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

## ARTICLE 16 FIRST MORTGAGEES

ARTICLE 16.1 Notice of Action. Any First Mortgagee which holds, insures or guarantees a First Mortgage and any prospective First Mortgagee, upon written request to the Association (which request shall include the Lender's name and address and the Unit number), will be entitled to timely written, notice of:

- (a) Any proposed amendment of this Declaration effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements appurtenant to the Unit (excluding changes allowed to be made by the Declarant herein) or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Unit, or (iv) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 15.2;
- (b) Any proposed termination of the common interest Community;
- (c) Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such lender;
- (d) Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage where such delinquency has continued for a period of sixty days;
- (e) Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to the provisions of this Declaration.

ARTICLE 16.2 Action by Mortgagee. If this Declaration requires the approval of any Mortgagee then if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee actually receives the request of the Association, any Owner, or any agent acting on behalf of any Owner or of the Association, then the request made and communicated will be deemed to have been approved by the Mortgagee.

ARTICLE 16.3 Member and First Mortgagee Approval. Subject to Sections 2.4 and the rights of Declarant provided for herein, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

- (a) unless it has obtained the prior written consent of Members holding at least sixty-seven percent (67%) of the votes in the Association and the approval at least sixty-seven percent (67%) of the First Mortgagees whose votes shall be allocated in identical percentages as provided to the Owner whose Unit is encumbered by the First Mortgage); provided that the approval of a First Mortgagee may be achieved either by the actual written consent of a First Mortgagee, or by complying with Section 16.2 hereof:

- (i) seek to abandon or terminate the Project, whether by act or omission, except:
    - (A) for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or
    - (B) in the case of a taking by condemnation or eminent domain, in which event the provisions of Section 13.5 of this Declaration shall control; or
    - (C) for amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Real Estate or improvements thereon;
  - (ii) except as permitted by Section 2.4 and Section 13.5, change the pro rata interest or obligations of any individual Condominium Unit for the purpose of:
    - (A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
    - (B) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;
  - (iii) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting of permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Project);
  - (iv) partition or subdivide any Condominium Unit, or;
  - (v) use hazard insurance proceeds for losses to any condominium property (whether to Condominium Units or Common Elements) for any purpose other than in accordance with the procedures set forth in Sections 2.4 and 13.3 hereof.
- (b) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the total allocated votes in the Association, and fifty-one percent (51%) of the First Mortgagees (whose votes shall be allocated in identical percentages as

provided to the Owner whose Unit is encumbered by the First Mortgage) (and provided that the approval of a First Mortgagee may be achieved either by the actual written consent of a First Mortgagee, or by complying with Section 16.2 hereof), add or amend any material provisions of this Declaration, the Articles of Incorporation of the Association which establish, provide for, govern or regulate any of the following:

- (i) voting rights;
- (ii) assessments, assessment liens or the priority of such liens;
- (iii) reserves for maintenance, repair and replacement of the Common Elements;
- (iv) responsibility for maintenance and repair of any portion of the Project;
- (v) reallocation of interests in the Common Elements, or rights to use of the Common Elements, except as contemplated under Sections 2.4 and 13.5 hereof;
- (vi) boundaries of any Condominium Unit except as contemplated under Section 2.4 hereof;
- (vii) convertibility of Condominium Units into Common Elements or of Common Elements into Condominium Units;
- (viii) expansions or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (ix) insurance, including, but not limited to, fidelity bonds;
- (x) leasing of Condominium Units;
- (xi) imposition of any restriction on the right of any Owner to sell or transfer his Condominium Unit;
- (xii) any decision by the Association to assume self-management of the Association, when professional management has previously been required by this Declaration or by any First Mortgagee or any insurer or guarantor of a First Mortgage;
- (xiii) any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, other than substantially in



accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association;

- (xiv) any action to terminate the legal status of the Project after substantial destruction or condemnation; or
- (xv) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages;

provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only.

ARTICLE 16.4 Financial Statements, Audit. The Association shall maintain copies of this Declaration, the Condominium Map, the Articles of the Incorporation of the Association, the Bylaws of the Association, and any rules and regulations relating to the Project together with all amendments to any such documents, as well as the Association's books, records and financial statements available for inspection by the Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Condominium Units. The documents will be made available by advance arrangement at a reasonable time. The Association shall not be required to prepare audited statements, however, if there is no audited statement available, any First Mortgagee will be allowed to have an audited statement prepared at its own expense.

## ARTICLE 17 MISCELLANEOUS

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

ARTICLE 17.2 Supplement to Condominium Interest Act. The provisions of this Declaration shall be in addition and supplemental to the Act, as it may be amended from time to time, and to all other applicable provisions of law.

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

ARTICLE 17.4 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association and any aggrieved Owner shall

have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right to levy and collect charges for the violation of any provision of any of the aforesaid documents, which charges shall be a perpetual lien in favor of the Association against each Condominium Unit, as more fully provided in Article 7 hereof. In any such action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. If the Association is the prevailing party, the costs and reasonable attorney's fees incurred in pursuing the action will be a special assessment against the Condominium Unit owned by the Owner who was the opposing litigant.

ARTICLE 17.5      Notices; Registration of Mailing Address. Each Owner and each First Mortgagee, insurer or guarantor of a First Mortgage, shall register his mailing address with the Association, and notices or demands intended to be served upon the Association, any such Owner, First Mortgagee, insurer or guarantor shall be hand delivered or sent by first class mail, postage prepaid, addressed to the Association at its address set forth below (or such other address of which it gives notice) or to such other person or entity addressed in the name of such person or entity, at such registered address. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Condominium Unit. Until the same has been changed, the address for the Association shall be: P.O. Box 2074, Glenwood Springs, Colorado 81602.

ARTICLE 17.6      Distribution of Information. In the event that the Association or any Owner wishes to notify the Owners of any matter affecting the Project or the community, the Association shall distribute said notice on behalf of itself or any such Owner. The right of an Owner to compel the distribution of such notices by the Association shall be subject to the reasonable rules and regulations promulgated by the Association.

ARTICLE 17.7      Non-Waiver. Failure by Declarant, the Association, any Owner, First Mortgagee or any other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

ARTICLE 17.8      Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

ARTICLE 17.9      Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.



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ARTICLE 17.10 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise described the scope of this Declaration or the intent of any provision hereof.

**ARTICLE 17.11      Conflicts in Documents.** In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and Bylaws of the Association, the Articles of Incorporation shall control.

**ARTICLE 17.12**      **Rule Against Perpetuities.** Unless exempted from the application of the rule against perpetuities under the provisions of the Act, any interest in Property granted under this Declaration shall vest, if at all, within the period measured by the life of the survivor of the grandchildren of George C. Bush, former President of the United States of America, who are living on the date of recording of this Declaration in the office of the Clerk and Recorder of the County, plus twenty-one (21) years.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set its hand and seal this 7 day of April, 2011.

Midland Center, LLC,  
a Colorado limited liability company

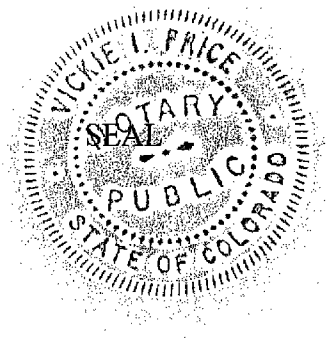
By:   
Alan Cappe  
Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

The above and foregoing CONDOMINIUM DECLARATION FOR Midland Center Lot 2 Condominiums as acknowledged before me this 7<sup>th</sup> day of March, 2011, by Alan Cappel, as Manager of Midland Center, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 8/15/2011



Vickie L Price  
Notary Public

**Exhibit List**

- A. Legal Description of Project
- B. Fractional Ownership of Unit Owners in the Project



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**EXHIBIT A**  
**LEGAL DESCRIPTION**

LOT 2, MIDLAND CENTER SUBDIVISION, ACCORDING TO THE PLAT  
THEREOF RECORDED OCTOBER 23, 2002, AS RECEPTION NO. 613091

**EXHIBIT B**

**FRACTIONAL OWNERSHIP INTERESTS**

<u>Unit Number</u>	<u>Square Footage</u>	<u>Fractional Interest</u>
1	3,470	10.08%
2	3,398	9.87%
3	2,444	7.10%
4	2,118	6.16%
5	2,118	6.16%
6	2,083	6.05%
7	2,135	6.20%
8	1,950	5.66%
9	1,917	5.57%
10	1,920	5.58%
11	1,558	4.52%
12	2,220	6.45%
13	4,136	12.01%
14	<u>2,956</u>	<u>8.59%</u>
<b>TOTAL</b>	<b>34,423</b>	<b>100.00%</b>

## **BYLAWS AND RESPONSIBLE GOVERNANCE POLICIES OF THE MIDLAND CENTER LOT 2 ASSOCIATION**

### **ARTICLE I OFFICES**

The Midland Center Lot 2 Condominium Association ("Association") is a Colorado nonprofit corporation, with its principal office located at Glenwood Springs CO. The mailing address of the Association is 0252 WESTBANK RD GLENWOOD SPRINGS, CO. The Association may also have other offices and may carry on its purposes at such other places within and outside the State of Colorado as the Board may from time to time determine.

### **ARTICLE II DEFINITIONS AND ASSENT**

2.01. Definitions. The definitions in the Declaration for The Midland Center Lot 2 Condominiums ("Declaration"), as amended from time to time and recorded in the office of the Clerk and Recorder of Garfield County, Colorado, shall apply to these Bylaws, and all defined terms used in the Bylaws shall have the same meaning as defined terms used in the Declaration, or the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes, Section 38-33.3-101 et. seq., as amended from time to time.

2.02. Assent. All present or future owners, their families, present or future tenants, and their guests and invitees, and any other person using the facilities of The Midland Center Lot 2 Condominiums in any manner are subject to these Bylaws, the Articles of Incorporation for the Association, the Declaration, and any procedures, rules, or policies adopted under such documents by the Association. The acquisition or rental of any lot or unit or the occupancy of one of the units shall constitute ratification and acceptance of these Bylaws.

### **ARTICLE III MEMBERSHIP, DECLARANT, ASSOCIATION GENERAL POWERS**

3.01. Membership. There shall be one Membership in the Association for each condominium unit. The person or persons who constitute the owner of a lot or condominium unit shall automatically be the holder of the Membership appurtenant to the lot or unit, and shall collectively be the Member of the Association with respect to that lot or unit, and the Membership appurtenant to the lot or unit shall automatically pass with fee simple title to the lot or unit. Membership in the Association shall not be assignable separate and apart from fee simple title to a lot or unit, and may not otherwise be separated from ownership of a lot or unit.

3.02 Period of Declarant Control. The Declarant shall control the Association until sixty (60) days after conveyance of seventy five percent (75%) of the lots and condominium



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units that may be created to lot and condominium unit owners other than Declarant; or two (2) years after the last conveyance of a lot or condominium unit by the Declarant in the ordinary course of business; or two (2) years after any right to add new lots or condominium units was last exercised by Declarant.

3.03 Declarant's Right to Appoint and Remove Directors and Officers. The Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Board of Directors and the officers of the Association during the period of Declarant control. This right is subject to and limited by section 6.03. At any time prior to the termination of the period of Declarant control, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Board.

3.04 Association's General Powers. The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of The Midland Center Lot 2. The Association shall serve as the governing body for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the common areas/common elements, the levying and collection of Assessments and other expenses and such other matters as may be provided in these Bylaws, the Declaration and the Articles of Incorporation. The Association shall have all of the powers, authority and duties as may be necessary and appropriate for the management of the business and affairs of the Midland Center Lot 2 Condominium, including without limitation all of the powers, authority and duties provided for in the Colorado Common Interest Ownership Act and the Colorado Revised Nonprofit Corporation Act.

#### ARTICLE IV

##### MEETINGS OF MEMBERS - NOTICE, QUORUMS, PROXIES, VOTING

4.01 Annual Meetings. The Annual Meeting shall be held once every fiscal year on a date and time as specified by the Board of Directors. The President shall preside over all meetings and is responsible for running the meeting according to agenda.

4.02 Special Meetings. Special Meetings of the Members may be called at any time by the President or by a majority of the Board or upon written request of Members who are entitled to vote twenty percent (20%) of all the votes of the Association.

4.03 Time Restrictions on Speakers. The President or other person presiding over the meeting may place the reasonable time restriction of five (5) minutes on those persons speaking during the meeting but shall permit a Member or an Member's designated representative to speak before the Board takes formal action on an item under discussion.

4.04 Secret Ballot. At the discretion of the Board or upon the request of twenty percent (20%) of the Members present at the meeting or represented by proxy, a vote on any matter affecting the Association on which all other owners are entitled to vote shall be by a secret ballot. Ballots shall be counted by a neutral third party or by a committee



of volunteers. Such volunteers shall be Members who are selected or appointed at an open meeting, in fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates.

**4.05 Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote, addressed to the Member's mailing address. Such notice shall specify the place, day and hour of the meeting and the items on the agenda. In the case of a special meeting, the purpose of the meeting shall be specified. For the purpose of issuing such notices, the Board may establish a record date for determination of membership in accordance with the laws of Colorado.

**4.06 Waiver of Notice.** Written waiver of notice signed by a Member or attendance at a meeting by a Member shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the failure to receive such notice or to defects in the notice.

**4.07 Quorum.** The presence at the meeting of Members entitled to cast, or of Members holding proxies and entitled to cast, fifty (50%) of the votes of Members shall constitute a quorum for any action. If, however, such quorum is not present or represented at any meeting, the Members entitled to vote shall have to adjourn the meeting, from time to time, without notice other than announcement at the meeting until a quorum shall be present or be represented.

**4.08 Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary at least twenty-four (24) hours prior to the commencement of the meeting of Members at which such proxy is sought to be utilized. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his lot or unit, and shall also cease upon attendance in person by the Member who previously gave a proxy. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless otherwise specifically provided in the proxy. A proxy shall not be valid if obtained through fraud or misrepresentation. If a lot or unit has multiple owners and more than one of the multiple owners are present to vote, the votes allocated to that lot or unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is a majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot or unit.

**4.09 Right to Revoke.** The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation if the Secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of signature on it or about the signatory's authority to sign for the owner. The Association and its officer or agent who accepts or rejects a vote, consent,

written ballot, waiver, proxy appointment or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

**4.10 Voting Rights of Members.** Each lot and condominium unit shall be entitled to one (1) vote (i.e. one vote per Member/owner). If title to a lot or unit is owned by more than one person, such persons shall collectively vote their interest in a single vote. If only one of the multiple owners is present at a meeting, such owner is entitled to cast the vote allocated to that lot or unit. If more than one of the multiple owners is present, the vote allocated to that lot or unit may be cast only in accordance with the agreement of a majority in interest of the owners.

**4.11 Majority Vote.** At any meeting of Members at which a quorum is present, the affirmative vote of Members representing one (1) vote more than fifty percent (50%) of the votes present in person or by proxy and entitled to be voted shall be the act of the Members.

**4.12 Order of Business.** The order of business at all meetings of Members shall be as follows:

- (a) Roll call;
- (b) Statement of compliance with procedures for notice of meeting or waiver of notice;
- (c) Reading of minutes;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of Directors (annual meetings only);
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

## **ARTICLE V**

### **MEETINGS OF DIRECTORS - NOTICE, QUORUMS, PROXIES, VOTING**

**5.01 Initial Board Meeting.** There shall be a meeting of the Board of Directors immediately following the Annual Meeting of the Members of the Association if all elected Directors are present at the meeting, but not longer than two (2) weeks following the Annual Meeting.

**5.02 Regular Meetings.** Regular meetings of the Board of Directors shall be held from time to time, as the Board of Directors, by vote, may determine with written notice to the general membership and at such place and hour as may be fixed, from time to time, by resolution of the Board.

5.03 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than seventy-two (72) hours notice to each Director.

5.04 Open Meetings. Notwithstanding any provision in the Declaration or other documents to the contrary, all meetings (regular and special) of the Association and Board of Directors are open to every owner of the Association, or to any person designated by a Member in writing as the Member's representative. Before the Board votes on an issue under discussion, owners or their designated representatives shall be permitted to speak regarding that issue.

5.05 Meetings by Telephone. The Directors may hold special meetings via a telephone conference call, and any action taken by the Board at such a telephone conference call meeting shall have the same force and effect as such action taken at a meeting at which a quorum of the Board was physically present. Any actions taken will be included in the minutes of the next meeting.

5.06 Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Any actions taken will be included in the minutes of the next meeting.

5.07 Quorum. The presence, in person or by proxy, at all meetings of the Board entitled to cast fifty percent (50%) of the votes shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting, the Director entitled to vote shall have to adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented.

5.08 Waiver of Notice. Before, at, or after any meeting of the Board of Directors, any Director may waive, in writing, notice of such meeting and such waiver shall be deemed equivalent to the giving and receipt of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him, except when a Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting was not lawfully called or convened.

5.09 Executive/Closed Door Meetings. The Board may hold an executive or closed door session and may restrict attendance to Board members and such other persons requested by the Board. The matters to be discussed at such an executive session shall include only matters enumerated below:

- (a) matters pertaining to employees of the Association or the managing agent's contract or involving the employment, promotion, discipline or dismissal of an officer, agent or employee of the Association;
- (b) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

- (c) investigative proceedings concerning possible or actual criminal misconduct;
- (d) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- (e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
- (f) review of or discussion relating to any written or oral communication from legal counsel.

**5.10 Attorney-Client Privilege.** Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate matter, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

**5.11 Conflict of Interest.** If any contract, decision, or other action taken by or on behalf of the Board of Directors would financially benefit any member of the Board of Directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the Board of Directors or a parent or spouse of any of those persons, that member of the Board of Directors shall declare a conflict of interest for that issue.

**5.12 Duty to Disclose.** The Director has a duty to disclose the existence of any actual or potential conflict of interest and all material facts relating to the actual or potential conflict in an open meeting prior to any discussion or action on that issue. After making such disclosure, the Director may participate in the discussion but shall not vote on that issue.

## **ARTICLE VI**

### **BOARD OF DIRECTORS**

**6.01. Number of Board of Directors.** The affairs of this Association shall be managed by a Board of not less than three (3) nor more than five (5) Directors who shall be Members of the Association. The number of the Board of Directors shall be established from time to time by amendment to these Bylaws.

**6.02 Initial Board of Directors.** The initial number of the Board of Directors shall be three (3) and the Declarant shall select the three initial Board of Directors during the period of Declarant control. After conveyance of twenty five percent (25%) of the lot and units that may be created to owners other than the Declarant, at least one Member and not less than twenty five percent (25%) of the Board of Directors must be elected by owners other than Declarant. After conveyance of fifty percent (50%) of the lot and units that may be created to owners other than the Declarant, not less than thirty three and one third percent (33.33%) of the Board of Directors must be elected by owners other than Declarant.

**6.03 Term of Office of Directors.** The term of office for the initial Directors shall be fixed at the time of their appointment as they themselves shall determine in order to establish a system of three (3) year terms in which at least one-third (1/3) of the Board of Directors is elected each year, and the Board shall identify in which year the directorships for each category of representation are subject to election. For example, if the number of Directors on the initial Board is set at three (3) pursuant to Section 6.02 above, one (1) Director shall serve for a one (1) year term, one (1) Director shall serve for a two (2) year term, and one (1) Director shall serve for a three (3) year term. At the expiration of the initial term of office of each respective Director, a successor shall be elected to serve three (3) years. Each Director shall hold office until such Director's successor is elected by the Association and qualified. Any Director elected by the Members shall serve for the remainder of the term of the Director replaced.

**6.04 Removal of Directors & Vacancies.** Directors may be removed and vacancies on the Board may be filled as follows:

(a) By the Members. Any Director may be removed, with or without cause, at any regular or special meeting of the Members by a vote of sixty seven percent (67%) of votes of all persons present and entitled to vote. A successor to any Director removed may be elected at such meeting to fill the vacancy created by removal of the Director. A Director whose removal is proposed by the Members shall be given notice of the proposed removal at least ten (10) days prior to the date of such meeting and shall be given an opportunity to be heard at such meeting.

(b) By the Board. Any Director who has three (3) consecutive unexcused absences from Board of Directors meetings or who is delinquent in the payment of any Assessment for more than thirty (30) days may be removed by a majority vote of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, resignation or removal by the Board, as set forth in this subsection (b), of a Director, a vacancy may be declared by the Board, and the Board may appoint a successor. Any successor appointed by the Board shall serve for the remainder of the term of the Director replaced.

**6.05 Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of The Midland Center Lot 2 Condominium . The Board of Directors shall have all of the powers, authority and duties granted or delegated to it by the Declaration, the Articles, these Bylaws and the Colorado Common Interest Ownership Act.

**6.06 Manager.** The Board of Directors may employ for the Association a Manager (at a compensation established by the Board of Directors) to perform such duties and services as it shall authorize. The Board of Directors may delegate, by resolution, any of the

powers and duties granted to it but, notwithstanding such delegation, shall not be relieved of its responsibility under the Declaration, the Articles or these Bylaws.

## **ARTICLE VII**

### **OFFICERS**

7.01. General. The officers of the Association shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer. The officers shall be appointed by an affirmative vote of a majority of the members of the Board. The Board may appoint such other officers, assistant officers, committees and agents, including Assistant Secretaries and Assistant Treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One (1) person may hold two (2) offices, except that no person may simultaneously hold the offices of President and Secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board, such officer, agent or employee shall follow the orders and instructions of the President.

7.02. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

7.03. Vacancies. A vacancy in any office, however occurring, may be filled by an affirmative vote of a majority of members of the Board for the unexpired portion of the term.

7.04. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents and employees.

7.05. Vice President. The Vice President shall assist the President and shall perform such duties as may be assigned to them by the President or by the Board. In the absence of the President, the Vice President designated by the Board or (if there be no such designation) designated in writing by the President shall have the powers and perform the duties of the President. If no such designation shall be made the Vice President may exercise such powers and perform such duties.

7.06. Secretary. The Secretary shall keep the minutes of the proceedings of the Members, executive committee (if any) and the Board. He shall see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration and as required by law. He shall be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board. He shall keep at its registered office or principal place of business within or outside Colorado a

record containing the names and registered addresses of all Members, the designation of the lot or unit owned by each Member, and, if such lot or unit is mortgaged, the name and address of each mortgagee. He shall, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board. Assistant Secretaries, if any, shall have the same duties and powers, subject to supervision by the Secretary.

7.07. Treasurer. The Treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. He shall receive and give receipts and acquittances for monies paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. He shall perform all other duties incident to the office of the Treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. He shall, if required by the Board, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of this duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Association. He shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the President. The Assistant Treasurers, if any, shall have the same powers and duties, subject to the supervision of the Treasurer.

## **ARTICLE VIII**

### **INDEMNIFICATION**

8.01. Definitions. For purposes of this Article VIII, the following terms shall have the meanings set forth below:

(a) Proceeding. Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal;

(b) Indemnified Party. Any person who is or was a party or is threatened to be made a party to any Proceeding by reason of the fact that he is or was a director or officer of the Association or, while a Director or officer of the Association, is or was serving at the request of the Association as a Director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise including, without limitation, any employee benefit plan of the Association for which any such person is or was serving as a trustee, plan administrator or other fiduciary.

8.02. Indemnification. The Association shall indemnify any Indemnified Party in any Proceeding to the fullest extent permitted by law.

8.03. Insurance. By action of the Board, notwithstanding any interest of the Directors in such action, the Association may purchase and maintain insurance, in such amounts as the Board may deem appropriate, on behalf of any Indemnified Party against any liability asserted against him and incurred by him in his capacity of or arising out of his status as an Indemnified Party, whether or not the Association would have the power to indemnify him against such liability under applicable provisions of laws.

8.04. Right to Impose Conditions to Indemnification. The Association shall have the right to impose, as conditions to any indemnification provided or permitted in this Article VIII, such reasonable requirements and conditions as to the Board may appear appropriate in each specific case and circumstances including, without limitation, any one or more of the following;

- (a) that any counsel representing the person to be indemnified in connection with the defense or settlement of any Proceeding shall be counsel mutually agreeable to the person to be indemnified and to the Association;
- (b) that the Association shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the person to be indemnified; and
- (c) that the Association shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified person's right of recovery, and that the person to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Association.

## **ARTICLE IX**

### **AMENDMENT OF BYLAWS**

9.01. Amendment by the Members. These Bylaws may be amended by the affirmative vote of at least seventy-five percent (75%) of the Members at any regular or special meeting, provided that a quorum is present at any such meeting. However, notwithstanding the foregoing, no provisions of these Bylaws may be amended by a number of Members which is less than the number of Members that is required within that particular provision to take certain action. Amendments may be proposed by the Board of Directors or by petition signed by the holders of at least a majority of the votes. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment will be voted upon.

9.02. Amendment by the Board. These Bylaws may be amended by the unanimous vote of the entire Board at any regular or special meeting, provided that a quorum is present at such meeting. A statement of any proposed amendment shall accompany the notice of any regular or special Board meeting at which such proposed amendment will be voted upon.

9.03. Scope of Amendments. These Bylaws may not be amended in a manner inconsistent with the Articles, the Declaration, or any applicable provision of Colorado law.



## **ARTICLE X** **CORPORATE SEAL**

The Board of Directors shall provide a suitable corporate seal containing the name of the Association, which seal shall be in the custody and control of the Secretary. The corporate seal shall be circular and shall have inscribed thereon the name of the Association and the word "Colorado" in the circle and the word "Seal" in the middle. If and when so directed by the Board of Directors, a duplicate seal may be kept and used by such officer or other person as the Board of Directors may name.

## **ARTICLE XI** **ANNUAL BUDGET AND AUDIT**

11.01 Annual Budget. The Board of Directors shall prepare or cause to be prepared an annual operating budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to all lot and condominium unit owners and shall set a date for a meeting of the lot and condominium unit owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after the mailing or other delivery of the summary. Unless at that meeting sixty seven percent (67%) of all lot and condominium unit owners reject the budget, the budget shall be ratified, whether or not a quorum of owners is present. In the event the proposed budget is rejected, the budget last ratified by the lot and condominium unit owners shall be continued until such time as the lot and condominium unit owners ratify a subsequent budget proposed by the Board of Directors.

11.02 Audit. The books and records of the Association may be subject to an audit at the discretion of the Board. An audit will be required if one third (1/3) of the Members request an audit. The audit will be conducted pursuant to generally accepted auditing standards by an independent and qualified person selected by the Board. The person selected for the audit shall be a certified public accountant.

## **ARTICLE XII** **ACCOUNTING RECORDS**

The Association shall maintain accurate and complete accounting records in accordance with generally accepted accounting principles.

## **ARTICLE XIII** **COLLECTION OF UNPAID ASSESSMENTS**

All homeowners are obligated to pay Assessments as established by the Board.

13.01 Due Date. Regular Assessments shall be due and payable on the first day of each calendar quarter.

13.02 Notice/Invoice. The Board shall mail to each owner at least ten (10) days prior to the due date a written notice/invoice of the amount of the next quarterly Regular Assessment that is due from each owner.

13.03 Delinquent Assessments. Any Assessment is deemed delinquent if not paid within fifteen (15) days of the due date.

13.04 Interest. Any Assessment deemed delinquent shall bear interest from and after the due date at the rate of interest set by the Board in accordance with the Declaration.

13.05 Late Fee. Any Assessment deemed delinquent shall also incur a late fee of \$25.00.

13.06 Statement of Unpaid Assessments. Upon written request, the Association shall furnish a Statement of Unpaid Assessments in accordance with the Declaration.

13.07 Collection. In addition to the remedies provided for in the Declaration, delinquent Assessments may be referred to an attorney and/or collection agency for collection. The delinquent owner will be liable for all collection costs, including attorney's fees.

#### **ARTICLE XIV** **ENFORCEMENT OF COVENANTS AND RULES**

14.01 Complaints. The Board will investigate all violations of covenants and rules that are reported to the Board in writing or by phone within thirty (30) days. Complaints that, in the opinion of the Board, lack sufficient information or detail may be deemed to not warrant further investigation.

14.02 Notification of Owners. If the investigation shows the reported violation to be accurate, the Board shall give written notice of the violation to the owner by mail, setting forth the nature of the violation or breach and the specific action or actions which shall be taken by the owner to remedy such violation or breach. The notice shall give the owner fifteen (15) days to cure the violation, submit a plan to remedy the violation, or request a hearing with the Board. Alternatively, the owner may request an appeals hearing with the Board at the next regularly scheduled Board meeting to appeal the notice of the violation. The Board's decision on the appeal is final.

14.03 Fines. If the owner does not cure the violation, submit a plan to remedy the violation, request an appeals hearing, or if the Board determines that a violation or breach exists after a hearing, the Board may levy a fine of \$50 per occurrence per day against the property owner who has violated or breached the covenant or rule. Once fines have started, owners must request a hearing with the Board in writing for the fines to cease. If the violation or breach is not cured within thirty (30) days after the initial fine is assessed, the Board may take legal action against the owner.

14.04 Collection Provisions. All fines, costs and expenses, including attorney's fees, necessary to enforce this policy shall be an Assessment against the owner's property and subject to all lien and collection powers of the Association.

14.05 Unresolved Violations. After the expiration of sixty (60) days following notice of a violation in which no hearing is requested or alternatively after an appeals meeting, the Board may:

- (a) suspend the rights or privileges of the owner relating to use of any common area and/or common elements within the Association and suspend the voting rights of the owner;
- (b) pursue all rights of action available at law or in equity including, but not limited to, the remedy of injunctive relief and obtaining a monetary judgment for all costs, expenses, including attorney's fees, and damages;
- (c) reserve the right to waive or increase fines or penalties based on the severity of the violation and circumstances;
- (d) enter at all reasonable times upon any lot or unit to which a violation, breach, or other condition to be remedied exists, and take the actions specified in the notice to the owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist. Such entry or action, or both, shall not be deemed to be a trespass or wrongful act. All costs and expenses, including attorney's fees, incurred by the Association or on its behalf in enforcing such violation, shall be a binding personal obligation of such owner enforceable at law, as well as a lien, on such owner's lot or unit.

## **ARTICLE XV**

### **INSPECTION AND COPYING OF RECORDS**

15.01 Association Records to be Kept. The Association shall keep a copy of the following records at its principal office:

- (a) Articles of Incorporation;
- (b) Bylaws;
- (c) Declaration;
- (d) resolutions adopted by the Board;
- (e) minutes of all Member and Director meetings for the past three (3) years;
- (f) all written communications within the past three (3) years to owners;
- (g) name and address of each owner;
- (h) name and address of each director and/or officer;
- (i) annual financial statements;
- (j) current insurance policies;
- (k) all financial audits and reviews conducted within the past three (3) years;
- (l) current annual budget;

- (m) a list, by lot or unit owner, of the Association's current and delinquent Assessments.

**15.02 Inspection and Copying of Association Records.** Owners are entitled to inspect and copy, at the owner's expense, any records listed above during regular business hours to the extent that:

- (a) the request is made in good faith and for a proper purpose;
- (b) the request describes with reasonable particularity the records sought and the purpose of the request; and
- (c) the records are relevant to the request.

The owner must make a written request to the Association Secretary at least five (5) days before the date on which the owner wishes to inspect and copy such records.

## **ARTICLE XVI**

### **INVESTMENT OF RESERVE FUNDS**

Reserve funds shall be invested in such amounts as may be determined and authorized by the Board. The Board may delegate its investment authority.

**16.01 Standard of Conduct.** Investment of reserve funds shall be done in good faith, within the best interests of the Association and with the care an ordinarily prudent person in a like position would exercise under similar circumstances

**16.02 Authorized Investments.** Authorized investments are U.S. Treasury Bills and Notes, Money Market Funds and Certificates of Deposits. Derivative securities and mortgage backed securities are not authorized investments.

**16.03 Investment Objectives.**

- (a) **Safety of Principal:** The long-term goal is safety of the reserve funds and to promote and ensure the preservation of the reserve fund's principal.
- (b) **Liquidity:** Funds shall be sufficiently liquid to meet anticipated or unanticipated expenditures. Liquidity can be achieved by structuring maturities to ensure the availability of assets when needed.
- (c) **Minimal Costs:** Investment costs should be minimized.
- (d) **Professional Management:** The Board may delegate its investment authority to professional managers.
- (e) **Return:** Funds should be invested to seek the highest level of return consistent with the preservation of principal.

**ARTICLE XVII**  
**ADOPTION AND AMENDMENT OF POLICIES, PROCEURES AND RULES**

17.01 Board Determination of Need for Rules. The Board may determine the need to adopt or amend certain rules, regulations, policies and/or procedures ("Rule") as it deems necessary, desirable or appropriate with respect to the interpretation and implementation of the governing documents of the Association, the operation of the Association, the use and enjoyment of common areas and/or common elements or for any other purpose.

17.02 Notice and Opportunity to Comment. The Board shall place the proposed Rule on its meeting agenda prior to the next open meeting. Written notice of the agenda and the proposed rule shall be mailed to the Members of the Association at least ten (10) days prior to the open meeting. The Board shall allow an opportunity for the Members to comment on the proposed Rule.

17.03 Adoption of Rule. Rules shall be effective only upon adoption by resolution at an open meeting of the Board following Board discussion and Member comment. The Board shall then provide written notice of the Rule adoption to its Members within fifteen (15) days after adoption.

17.04 Emergency. The Board may waive notice and opportunity to comment in the event the Board determines, in its sole discretion, an emergency Rule needs to be immediately adopted.

**ARTICLE XVIII**  
**RESOLVING DISPUTES BETWEEN ASSOCIATION AND OWNERS**

In the event of any dispute between the Association and an owner, for which a method, policy or procedure to address such dispute is not provided by the Declaration or Bylaws of the Association, the owner and Association shall first submit the matter to mediation. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within sixty (60) calendar days of the date written notice requesting mediation is sent by one party to the other party.

**ARTICLE XIX**  
**CONFLICTS BETWEEN DOCUMENTS**

In the event of any conflict or inconsistency between any provision of these Bylaws and the Declaration, the provisions of the Declaration shall govern and control and these Bylaws shall be amended to the extent necessary to conform to the Declaration.

Reception#: 799749  
03/07/2011 12:04:00 PM Jean Alberico  
70 of 71 Rec Fee:\$361.00 Doc Fee:0.00 GARFIELD COUNTY CO

**ADOPTED** By an affirmative vote of the Members of the Midland Center Lot 2  
Condominium Association at the annual meeting of Members  
dated 3-3-11.

ATTEST:

  
Secretary

SPECIAL WARRANTY DEED

THIS DEED, made this February 18, 2011  
between

MIDLAND CENTER, LLC, a Colorado limited liability  
company

grantor, and

MIDLAND CENTER LOT 2 CONDOMINIUM  
ASSOCIATION, a Colorado not-for-profit corporation

whose legal address is: 252 Westbank Road, Glenwood Springs, Colorado 81601

of the City of Glenwood Springs, and State of Colorado, grantee,

WITNESSETH, That the grantor, for and in consideration of the sum of:

TEN DOLLARS (\$10.00),

and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey, and confirm, unto the grantee its successors and assigns forever, all the real property, together with all improvements, if any, situate, lying and being in the County of Garfield and State of Colorado, described as follows:

All Common Elements including service utility lines to each individual condominium unit, the building core and shell, consisting of the foundation, walls and roof structure, all drainage facilities located upon the Property, all common paved driving and walkway surfaces and all landscaping located on LOT 2, Midland Center Subdivision, according to the Plat thereof, filed for record 03/07, 2011 at Reception No. 799750 of the Garfield County Clerk and Recorder

also known by street and number as: 0120 Midland Avenue, Glenwood Springs, CO 81601

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with the appurtenances, unto the grantee, its successors and assigns forever. The grantor, for itself and its successors, does covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the grantor.

IN WITNESS WHEREOF, The grantor has executed this deed on the date set forth above.

GRANTOR

Midland Center, LLC, a Colorado limited liability company

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

Manager

State of Colorado )ss

County of Garfield )

The foregoing was acknowledged before me this 21 day of Feb, 2011 by: Alan J. Caputo, (title) President of Midland Center, LLC, grantor.

My commission expires: Sept 17, 2012  
Witness my hand and official seal.

Notary Public

