



675925 06/09/2005 02:11P B1695 P415 M ALSDORF
1 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

DECLARATION

FOR

TOWN CENTER LOT 19

BUILDING CONDOMINIUM

Lawrence R. Green
P.O. Drawer 790
Glenwood Springs, CO 81602

132
2001
7-2-02



TABLE OF CONTENTS

ARTICLE 1

GENERAL

.....	1
1.1 <u>Purpose</u>	1
1.2 <u>Intention of Declarant</u>	1
1.3 <u>Development and Use</u>	1
1.4 <u>Condominium Declaration</u>	1
1.5 <u>Mixed Use</u>	1
1.6 <u>Covenant Running With the Land</u>	2

ARTICLE 2

DEFINITIONS

.....	2
2.1 <u>Allocated Interests</u>	2
2.2 <u>Assessments</u>	2
2.3 <u>Association</u>	2
2.4 <u>Association Documents</u>	2
2.5 <u>Building</u>	2
2.6 <u>Commercial Assessment</u>	2
2.7 <u>Commercial Common Element</u>	3
2.8 <u>Commercial Common Expenses</u>	3
2.9 <u>Commercial Limited Common Elements</u>	3
.....	3
2.10 <u>Commercial Matter</u>	3
2.11 <u>Commercial Unit</u>	3
2.12 <u>Common Assessment</u>	3
2.13 <u>Common Elements</u>	3
2.14 <u>Common Expenses</u>	4
2.15 <u>Condominium Map</u>	5
2.16 <u>Condominium Project</u>	5
2.17 <u>Condominium Unit</u>	5
2.18 <u>Declarant</u>	5
2.19 <u>Declaration</u>	5
2.20 <u>Default Assessments</u>	5
2.21 <u>Executive Board</u>	5
2.22 <u>First Mortgage</u>	5
2.23 <u>First Mortgagee</u>	6
2.24 <u>General Assessment</u>	6
2.25 <u>General Common Elements</u>	6



2.26 General Matter 6

2.27 Individual Air Space Unit 6

2.28 Limited Common Elements 7

2.29 Management Agreement 7

2.30 Managing Agent 7

2.31 Master Articles or Master Articles of Incorporation
..... 7

2.32 Master Association 7

2.33 Master Bylaws 7

2.34 Master Common Elements 8

2.35 Master Declaration 8

2.36 Master Documents 8

2.37 Mortgage 8

2.38 Mortgagee 8

2.39 Member 8

2.40 Owner 8

2.41 Project 8

2.42 Property 8

2.43 Reimbursement Assessment 9

2.44 Residential Assessment 9

2.45 Residential Common Elements 9

2.46 Residential Common Expenses 9

2.47 Residential Limited Common Element
..... 9

2.48 Residential Matter 9

2.49 Residential Unit 10

2.50 Special Assessment 10

2.51 Successor Declarant 10

ARTICLE 3

DIVISION OF BUILDING INTO CONDOMINIUM OWNERSHIP

..... 10

3.1 Condominium Map 10

3.2 Amendment of the Map 11

3.3 Division of Property into Condominium Units
..... 11

3.4 Inseparability of a Condominium Unit - Combination of Condominium
Units 11

3.5 Description of Condominium Unit 12

3.6 Separate Assessment and Taxation Notice to Assessor
..... 12

3.7 Title 12



3.8	<u>Nonpartitionability of Common Elements</u>	12
ARTICLE 4		
	DECLARANT'S DEVELOPMENT RIGHTS	13
ARTICLE 5		
	OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS AND CONDOMINIUM PROJECT	14
5.1	<u>General Common Elements</u>	14
5.2	<u>Limited Common Elements</u>	14
ARTICLE 6		
	THE ASSOCIATION	15
6.1	<u>Membership</u>	15
6.2	<u>Executive Board</u>	15
6.3	<u>Authority</u>	17
6.4	<u>Classes of Membership in Association</u>	17
6.5	<u>Voting Rights in Association</u>	17
6.6	<u>Owner's and the Association's Address for Notices</u>	18
ARTICLE 7		
	ASSESSMENTS	19
7.1	<u>Obligation</u>	19
7.2	<u>Purpose of Assessments</u>	19
7.3	<u>Budget</u>	19
7.4	<u>Annual Assessments</u>	19
7.5	<u>Apportionment of Annual Assessments</u>	20
7.6	<u>Residential Assessment</u>	20
7.7	<u>Commercial Assessments</u>	20
7.8	<u>Allocation of Assessments for Limited Common Elements</u>	20
7.9	<u>Special Assessments</u>	21
7.10	<u>Default or Reimbursement Assessments</u>	21
7.11	<u>Effect of Nonpayment; Assessment Lien</u>	21
7.12	<u>Personal Obligation</u>	22

7.13	<u>Subordination of Lien</u>	22
7.14	<u>Successor's Liability for Assessments; Subordination of Lien</u>	23
7.15	<u>Notice to Mortgagee</u>	23
7.16	<u>Payment by Mortgagee</u>	23
7.17	<u>Statement of Status of Assessment Payment</u>	23
7.18	<u>Working Capital Fund</u>	23

ARTICLE 8 INSURANCE

8.1	<u>Insurance on Common Elements</u>	24
8.2	<u>General Provisions of Insurance Policies</u>	26
8.3	<u>Deductibles</u>	26
8.4	<u>Insurance Trustee</u>	26
8.5	<u>Association Insurance as Primary Coverage</u>	27
8.6	<u>Insurance to be Maintained by Owners</u>	27
8.7	<u>Annual Review of Insurance Policies</u>	27
8.8	<u>Notice of Cancellation</u>	27

ARTICLE 9 MECHANIC'S LIENS

9.1	<u>No Liability</u>	28
9.2	<u>Indemnification</u>	28
9.3	<u>Association Action</u>	28

ARTICLE 10 EASEMENTS

10.1	<u>Recorded Easements</u>	28
10.2	<u>Encroachments</u>	29
10.3	<u>Easements for Emergency Ingress and Egress</u>	29
10.4	<u>Utilities</u>	29
10.5	<u>Maintenance Easement</u>	30
10.6	<u>Drainage Easement</u>	30
10.7	<u>Easements of Access for Repair, Maintenance, and Emergencies</u>	30



10.8	<u>Declarant's Rights Incident to Completion of the Project</u>	31
10.9	<u>Easements Deemed Created</u>	31

ARTICLE 11

RESTRICTIVE COVENANTS

		31
11.1	<u>Compliance with Provisions of Declaration and Bylaws</u>	31
11.2	<u>Use and Occupancy</u>	31
11.3	<u>Declarant's Use</u>	32
11.4	<u>Use of Common Elements</u>	32
11.5	<u>Exterior Changes</u>	32
11.6	<u>Signs and Advertising</u>	32
11.7	<u>Satellite Dishes</u>	33

ARTICLE 12

MAINTENANCE RESPONSIBILITY

		33
12.1	<u>Owner's Rights and Duties with Respect to Interiors</u>	33
12.2	<u>Responsibility of the Owner</u>	33
12.3	<u>Responsibility of the Association</u>	34

ARTICLE 13

DAMAGE AND DESTRUCTION, OBSOLESCENCE, CONDEMNATION

		34
13.1	<u>Appointment of Attorney-in-Fact</u>	34
13.2	<u>Damage and Destruction</u>	34
13.3	<u>Obsolescence</u>	36
13.4	<u>Condemnation</u>	36

ARTICLE 14

MORTGAGEE'S RIGHTS

		37
14.1	<u>Notices</u>	37
14.2	<u>Mortgagee Requests</u>	38
14.3	<u>No Impairment of Lien</u>	38
14.4	<u>Consent of Mortgagees Required</u>	39

ARTICLE 15

MASTER DECLARATION

		39
--	--	----



675925 06/09/2005 02:11P B1695 P421 M ALSDORF
7 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

ARTICLE 16

DURATION OF COVENANTS AND AMENDMENT

.....	40
16.1 <u>Term</u>	40
16.2 <u>Amendment</u>	40
16.3 <u>Binding Upon and Inure to the Successors</u>	40

ARTICLE 17

MISCELLANEOUS

.....	40
17.1 <u>Period of Condominium Ownership</u>	40
17.2 <u>Supplemental to Colorado Common Interest Ownership Act</u>	40
17.3 <u>Conveyance of Condominium Units</u>	40
17.4 <u>Enforcement</u>	41
17.5 <u>Non-Waiver</u>	41
17.6 <u>Severability</u>	41
17.7 <u>Number and Gender</u>	41
17.8 <u>Captions</u>	41
17.9 <u>Conflicts in Documents</u>	41

DECLARATION FOR TOWN CENTER LOT 19 BUILDING CONDOMINIUM

THIS DECLARATION FOR TOWN CENTER LOT 19 BUILDING CONDOMINIUM dated this ____ day of June, 2005, shall be effective upon recordation and is made by TOWN CENTER BUILDERS, LLC, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in the County of Garfield, Colorado, more particularly described on Exhibit "A" attached and made part of this Declaration by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1 GENERAL

1.1 **Purpose.** The purpose of this Declaration is to create a condominium project (the "Condominium Project") pursuant to the provisions of the Colorado Common Interest Ownership Act, Section 38-33.3-101 et. seq., Colorado Revised Statutes, as amended and supplemented from time to time (the "Act").

1.2 **Intention of Declarant.** Declarant desires to protect the value and desirability of the Condominium Project, further a plan for the improvement, sales, and condominium ownership of the Condominium Project, create a harmonious and attractive development, and promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Units in the Condominium Project.

1.3 **Development and Use.** The Condominium Project will consist of a maximum of fifteen (15) Condominium Units of which up to ten (10) Units may be designated for Commercial use and five (5) Units may be designated for Residential Use. No additional Condominium Units may be established on the Property by subdivision of existing units, conversion of non-condominium space, or otherwise.

1.4 **Condominium Declaration.** To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration.

1.5 **Mixed Use.** The Residential Units and the Commercial Units together shall comprise the Condominium Project, the name of which is Town Center Lot 19 Building Condominium. The functions, activities, physical appearance and other features commonly associated with commercial businesses and residential uses shall be expressly permitted on the Property and within the Building and other improvements, all as more particularly described and governed herein.



1.6 **Covenant Running With the Land.** All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2 DEFINITIONS

2.1 **Allocated Interests.** “Allocated Interests” shall mean, with respect to each Individual Air Space Unit, a fraction or percentage of the undivided interests in the Common Elements and in the Common Expenses of the Association allocated to such Individual Air Space Unit and a portion of the votes in the Association allocated to such Individual Air Space Unit in accordance with the percentages set forth in Exhibit “B” attached hereto and made a part hereof.

2.2 **Assessments.** “Assessments” shall mean a General, Common, Commercial, Residential, Special, Default or Reimbursement Assessment as defined herein and levied pursuant to Article 7 below.

2.3 **Association.** “Association” shall mean and refer to Town Center Lot 19 Building Condominium Association, 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.

2.4 **Association Documents.** “Association Documents” means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the articles of incorporation and bylaws of the Association, the Map, and any procedures, rules, regulations, or policies relating to the Project adopted under such documents by the Association or the Executive Board.

2.5 **Building.** “Building” shall mean and refer to the building (including all fixtures and improvements therein contained) located on the Property, as described in the Condominium Map recorded simultaneously herewith and within which one or more Units or Common Elements are located.

2.6 **Commercial Assessment.** “Commercial Assessment” shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, which the Executive Board determines are attributable to Commercial Matters or Commercial Expenses and which the Executive Board allocates to Commercial Unit Owners. Each commercial unit Owner shall pay such assessments to the Association. Any of the foregoing Commercial Assessments may include, if applicable, a late charge, interest, fines and other costs of enforcement, including

reasonable attorney's fees, if a Commercial Unit Owner defaults in the payment of a Commercial Assessment.

2.7 **Commercial Common Element.** "Commercial Common Element" shall mean all real and personal property, including improvements, acquired or designated as a Commercial Common Element on the Map, herein, or from time to time by Declarant or the Association, such Commercial Common Elements being for the common use and enjoyment of all of the Commercial Unit Owners as may be provided herein or in an amended Declaration for the Project. Commercial Common Elements are identified on the Map by the designation "GCE Commercial."

2.8 **Commercial Common Expenses.** "Commercial Common Expenses" shall mean those Common Expenses as defined in Section 2.14 hereof which the Executive Board determines are incurred as a result of or for the benefit of the Commercial Condominium Units at the Project.

2.9 **Commercial Limited Common Elements.** "Commercial Limited Common Elements" shall mean any portion of the Project designated as a Commercial Limited Common Element on the Map or, from time to time, designated as a Commercial Limited Common Element by Declarant or by the Association, such Commercial Limited Common Element being for the exclusive use and benefit of one or more Commercial Unit Owners as may be provided herein or in an amended Declaration covering such portion or portions of the Project.

2.10 **Commercial Matter.** "Commercial Matter" shall mean any matter, issue, or decision which is related solely to the use, operation and repair of the Commercial Limited Common Elements, if any, Commercial Common Elements, if any, Commercial Common Expenses, Commercial Assessments or the ownership of Commercial Units.

2.11 **Commercial Unit.** "Commercial Unit" shall mean a "Condominium Unit" or "Unit" as defined in Section 2.17 hereof which is designated exclusively for commercial use.

2.12 **Common Assessment.** "Common Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, which are to be allocated to and paid by each owner to the Association. Any of the foregoing Common Assessments may include, if applicable, a late charge, interest, fines and other costs of enforcement, including reasonable attorney's fees, if an Owner defaults in the payment of a Common Assessment.

2.13 **Common Elements.** "Common Elements" shall mean the portions of the Building and the Property, as shown on the Condominium Map, except the Individual Air Space Units as defined hereinafter, and shall include without limitation the following:

2.13.1 The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, fireplace flues, chimneys,



675925 06/09/2005 02:11P B1695 P425 M ALSDORF
11 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

chimney chases, roofs, patios, decks, balconies, corridors, lobbies, vestibules, entrances and exits; and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air-conditioning which exist for use by one or more of the owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith and the areas designated on the Map as including those installations; trash rooms and storage rooms; spa equipment rooms and elevators and stairs), except for the individual Air Space Units; and

2.13.2 All yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens, parking areas, and related facilities, if any, upon the Property adjacent to the Building and designated on the Map as Common Elements; and

2.13.3 The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Building existing for use of one or more of the Owners; and

2.13.4 In general, all other parts of the Condominium Project designated by Declarant as Common Elements and existing for the use of one or more of the owners.

The Common Elements shall be owned by the Owners of the separate Condominium Units, each owner of a Condominium Unit having an undivided interest in the Common Elements as provided below.

2.14 **Common Expenses.** “Common Expense(s)” or “General Common Expenses” shall mean and includes, but shall not be limited to, the following:

2.14.1 Expenses of administration, insurance, operation, and management, repair, or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as delineated below;

2.14.2 Expenses declared Common Expenses by the provisions of this Declaration or the bylaws of the Association;

2.14.3 All sums lawfully assessed against the Condominium Units by the Executive Board;

2.14.4 Expenses agreed upon as Common Expenses by the members of the Association; and

2.14.5 Expenses provided to be paid pursuant to any Management Agreement.



675925 06/09/2005 02:11P B1695 P426 M ALSDORF
12 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

2.15 **Condominium Map.** “Condominium Map” or “Map” means and includes any engineering survey or surveys of the Property locating the Condominium Units in the Building and the Building on the Property, and depicting the floor plans of the Units together with other drawings or diagrammatic plane and information regarding the Property as may be included in the discretion of the Declarant, as recorded by Declarant in the office of the Clerk and Recorder of Garfield County, Colorado.

2.16 **Condominium Project.** “Condominium Project” means all of the Property, which is submitted to condominium ownership by this Declaration and the Map, including, without limitation, the Individual Air Space Units and the Common Elements.

2.17 **Condominium Unit.** “Condominium Unit” or “Unit” means the fee simple interest in and to an Individual Air Space Unit, together with the Limited Common Elements appurtenant to or designated herein or on the Map as being for the use of such Unit and the undivided interest in the Common Elements appurtenant to the individual Air Space Unit as specified in the attached Exhibit “B.” Condominium Unit is also referred to as a Unit under the Act.

2.18 **Declarant.** Except as provided below, “Declarant” shall mean and refer to Town Center Builders, 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 of Garfield, Colorado.

2.19 **Declaration.** “Declaration” shall mean and refer to this Condominium Declaration for Town Center Lot 19 Building Condominium, as it may be amended or supplemented from time to time.

2.20 **Default Assessments.** “Default Assessments” shall have the meaning set forth in Section 7.10 hereof.

2.21 **Executive Board.** “Executive Board” means the governing body of Town Center Lot 19 Building Condominium Association.

2.22 **First Mortgage.** “First Mortgage” means an unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Garfield County, Colorado, which secures financing for the construction or development of the Condominium Project or which encumbers a Condominium Unit, and which, in any case, has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

2.23 **First Mortgagee.** “First Mortgagee” shall mean and refer to any person or entity named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

2.24 **General Assessment.** “General Assessment” shall mean the Annual Assessments as defined in Section 7.4 hereof.

2.25 **General Common Elements.** “General Common Elements” shall mean all real and personal property, including improvements, acquired or designated as a General Common Element on the Map or from time to time by Declarant or by the Association, such General Common Elements being for the common use and enjoyment of all of the Owners as may be provided for herein or in an Amended Declaration covering such portion or portions of the Project. General Common Elements are identified on the Map by the designation “GCE Residential and Commercial.”

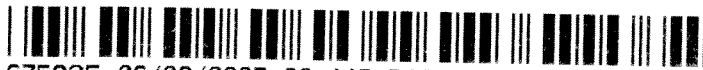
2.26 **General Matter.** “General Matter” shall mean any matter, issue or decision which affects the building or Project as a whole or affects both Residential and Commercial Units, Residential and Commercial Common Elements, or Residential and Commercial Limited Common Elements.

2.27 **Individual Air Space Unit.** “Individual Air Space Unit” means a single unit depicted on the Map and consisting of enclosed rooms in the Building and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof. For the purpose of defining an Individual Air Space Unit, the terms set forth below shall be defined as follows:

2.27.1 **“Unfinished wall”** means the studs, supports, and other wooden, metal, or similar structural materials which constitute the interior face of a wall of an Individual Air Space Unit.

2.27.2 **“Unfinished ceiling”** means the beams, joists, and wooden or other structural materials which constitute the ceiling of an Individual Air Space Unit.

2.27.3 **“Unfinished floor”** means the beams, floor joists, and floor deck material which constitute the floor of an Individual Air Space Unit. An Individual Air Space Unit shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, windows and window frames, shutters, awnings, doorsteps, stoops, and doors and door frames. An Individual Air Space Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors. An Individual Air Space Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, or other utility services to the Individual Air Space Unit and located within the



unfinished walls, ceilings, and floors; provided, however, that an Individual Air Space Unit shall not include any of the structural components of the Building or utility or service lines located within the individual Air Space Unit but serving other Individual Air Space Units.

2.28 **Limited Common Elements.** “Limited Common Elements” means those parts of the Common Elements which are limited to and reserved for the use of the owners of one or more, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, entryway, or porch adjacent to an Individual Air Space Unit, storage spaces outside Individual Air Space Units and designated as Limited Common Elements serving those particular individual Air Space Units, and any individual fireplace chimneys and flues in the Building, individual air-conditioning units and fixtures, and individual water and sewer service lines, hot water heaters, and any plumbing or other installation servicing an Individual Air Space Unit, including, but not limited to, all such items designated as Limited Common Elements on the Map. Any deck, balcony or patio which is accessible only from, and which adjoins a particular Individual Air Space Unit, without further reference thereto, shall be used in connection with such Individual Air Space Unit to the exclusion of the use thereof by the other owners, except by invitation. No reference thereto need be made in any instrument of conveyance, encumbrance, or other instrument. These may be designated as Commercial or Residential Limited Common Elements as defined in Sections 2.9 and 2.47 respectively.

2.29 **Management Agreement.** “Management Agreement” means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Condominium Project.

2.30 **Managing Agent.** “Managing Agent” means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Condominium Project.

2.31 **Master Articles or Master Articles of Incorporation.** “Master Articles” or “Master Articles of Incorporation” shall mean the Articles of Incorporation of the Town Center Owners Association, Inc. which were filed with the Secretary of State on March 28, 2003, to create the Master Association, as amended from time to time.

2.32 **Master Association.** “Master Association” shall mean the Town Center Owners Association, Inc., a nonprofit membership corporation, or any successor of the Master Association by whatever name, charged with the duties and obligations set forth in the Master Declaration.

2.33 **Master Bylaws.** “Master Bylaws” shall mean the Bylaws of the Town Center Owners Association, Inc. which establish the methods and procedures of its operation, as amended from time to time.



2.34 **Master Common Elements.** “Master Common Elements” shall mean all real and personal property, including improvements, acquired or designated as Master Common Elements on the Map or from time to time by Declarant or by the Association, which are for the common use and enjoyment of all of the members of the Master Association and which are managed and governed by the Master Association. Master Common Elements shall be owned by the Master Association.

2.35 **Master Declaration.** “Master Declaration” shall mean that Declaration entitled the “Master Declaration of Covenants, Conditions and Restrictions for Town Center Subdivision,” recorded in the Garfield County real estate records on March 25, 2003, at Book 1450, Page 31, as Reception No. 623533, incorporated in its entirety herein by this reference, including any amendments thereto. Those owning Units in this Building shall be bound by all of the terms and conditions of the Master Declaration.

2.36 **Master Documents.** “Master Documents” shall mean the basic documents creating and governing all or part of Town Center Subdivision, Carbondale, Colorado, as they may be amended from time to time, including, but not limited to, the Master Declaration, the Master Articles of Incorporation, and the Master Bylaws, and any other procedures, regulations or policies adopted under such documents by the Master Association.

2.37 **Mortgage.** “Mortgage” means any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Garfield County, Colorado, which secures financing for the construction or development of the Project or which encumbers a Condominium Unit.

2.38 **Mortgagee.** “Mortgagee” means any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.

2.39 **Member.** “Member” shall mean and refer to each Owner of a Condominium Unit.

2.40 **Owner.** “Owner” shall mean and refer to any record owner (including a Declarant and including a contract vendor under a land sale contract or contract for deed), 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 proceeding in lieu thereof).

2.41 **Project.** “Project” shall mean and refer to the totality of all the Property, Building, Condominium Units and Common Elements.

2.42 **Property.** “Property” shall mean the real property described in the attached Exhibit “A”.

2.43 **Reimbursement Assessment.** “Reimbursement Assessment” shall mean a charge against a particular Owner and such Owner’s Unit for the purpose of reimbursing the Association for any expenditures and other costs of the Association in curing any violation, directly attributable to the Owner, of this Declaration or any rules or regulations promulgated by the Association. Any Reimbursement Assessment may include, if applicable, a late charge, interest, fines, and other costs of enforcement, including reasonable attorney’s fees, if an owner defaults in the payment of a Reimbursement Assessment.

2.44 **Residential Assessment.** “Residential Assessment” shall mean assessments made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, which are determined by the Executive Board to be as a result of or attributable to Residential Units. Such assessments will be allocated to and paid by the Residential Owners to the Association. Any of the foregoing Residential Assessments may include, if applicable, a late charge, interest, fine and other costs of enforcement, including reasonable attorney’s fees, if a Residential owner defaults in the payment of a Residential Assessment.

2.45 **Residential Common Elements.** “Residential Common Elements” shall mean all real and personal property, including improvements, acquired or designated as a Residential Common Element on the Map or from time to time by Declarant or by the Association, such Residential Common Elements being for the common use and enjoyment of all Residential Unit Owners as may be provided herein or in an Amended Declaration covering such portion or portions of the Project. Residential Common Elements are identified on the Map by the designation “GCE Residential.”

2.46 **Residential Common Expenses.** “Residential Common Expenses” shall mean those Common Expenses as defined in Section 2.14 which the Executive Board determines are attributable to or resulting from expenses incurred for the benefit of Residential Units, Residential Common Elements or Residential Limited Common Elements.

2.47 **Residential Limited Common Element.** “Residential Limited Common Element” shall mean any portion of the Project designated as a Residential Limited Common Element on the Map or from time to time by Declarant or by the Association which is for the exclusive use and benefit of a Residential Unit Owner or Residential Unit Owners as may be provided herein or in an Amended Declaration covering such portion or portions of the Project.

2.48 **Residential Matter.** “Residential Matter” shall mean any matter, issue, or decision related solely to the use, operation or repair of the Residential Common Elements, if any, Residential Limited Common Elements, if any, Residential Common Expenses, Residential Assessments, or which relates solely to the ownership of Residential Units.

2.49 **Residential Unit.** “Residential Unit” or “Residential Condominium Unit” shall mean the fee simple interest in and to a Condominium Unit as defined in Section 2.17 which is designated on the Map as being solely for residential use.

2.50 **Special Assessment.** “Special Assessment” shall mean a charge against an Owner and the Owner’s Unit representing a portion of the costs to the Association for the purpose of funding major capital purchases, repairs, maintenance, replacements and improvements or for any other purpose designated herein. Any Special Assessment may include, if applicable, a late charge, interest, fines and other costs of enforcement, including reasonable attorney’s fees, if an owner defaults in the payment of a Special Assessment.

2.51 **Successor Declarant.** “Successor Declarant” means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the office of the Clerk and Recorder of Garfield County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant’s rights and obligations under this declaration shall cease and terminate to the extent provided in such document.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

ARTICLE 3

DIVISION OF BUILDING INTO CONDOMINIUM OWNERSHIP

3.1 **Condominium Map.** The Condominium Map shall be filed for record in the office of the County Clerk and Recorder of Garfield County, Colorado. Any map filed subsequent to the first Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed for record following substantial completion of the Building and prior to the conveyance of any Condominium Unit depicted on the Map to a purchaser. The Map shall show the location of the Building on the Property; the floor and elevation plans; the location of the Condominium Units within the Building, both horizontally and vertically; the thickness of the common walls, if any, between or separating the Condominium Units one from the other, or one from Common Elements, as applicable; the Condominium Unit designations; designation of General Common Elements and Limited Common Elements; and such other information as Declarant may desire in its discretion. The Map shall contain a certificate of a registered professional engineer or licensed architect or a licensed land surveyor certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the Building and the Condominium Units, the dimensions and, if Declarant directs, the square foot areas of the Condominium Units, and the elevations of the unfinished floors and ceilings as constructed, and certifying that such Map is prepared subsequent to the substantial completion of the improvements. Each supplement or amendment shall set forth a like certificate when appropriate. The Map shall



further contain such other information, certifications and depictions as may be required under Section 38-33.3-209 of the Act.

3.2 **Amendment of the Map.** Declarant reserves the right to amend the Map, from time to time, to the fullest extent permitted under the Act.

3.3 **Division of Property into Condominium Units.** Upon the date hereof the real property and improvements constructed thereon has been divided into thirteen (13) Condominium Units, consisting of eight (8) Commercial Units and five (5) Residential Units, together with Common Elements and Limited Common Elements, all as reflected on the Condominium Map recorded on even date herewith. Each such Condominium Unit consists of a fee simple interest in an Individual Air Space Unit together with the Limited Common Elements designated to any Unit on the Map or herein and an undivided fee simple interest in the Common Elements in accordance with the Allocated Interests in the Common Elements as set forth in the attached Exhibit "B". Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. No further subdivision or re-subdivision of any Unit shall be allowed, except as provided in Section 3.4, below, and except that Unit B1 and Unit G1, may each be re-subdivided into two (2) Units (i) by construction of a demising wall along the line of structural columns now in place and depicted on the Condominium Map in each of said Units which shall be constructed in accordance with all local building codes, governmental laws, ordinances, rules and regulations appurtenant thereto; and (ii) by compliance with all laws, ordinances, rules and regulations of the Town of Carbondale regarding the condominiumization of existing buildings. In the event of any such re-subdivision of Units B1 and G1 as allowed hereby, the Allocated Interest shall be re-allocated and the Condominium Map shall be amended to accurately reflect such re-subdivision.

3.4 **Inseparability of a Condominium Unit - Combination of Condominium Units.** Each Unit, the Limited Common Elements designated to each Unit, and the undivided interest in the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Condominium Unit. No Owner of a Residential Condominium Unit shall convey, lease, encumber, devise, or transfer in any manner the Limited Common Elements designated to a Residential Unit separately from the Unit to which such Limited Common Elements are designated, including, but not limited to, the parking garage designated on the Map to each Residential Unit. Each Owner shall have the right to physically combine adjacent Units and to construct such improvements and alter as much of the Common Elements as is necessary for this purpose, provided that the same is done in conformity with all local building codes, governmental laws, ordinances, rules and regulations appurtenant thereto, and the cost of any such alteration is borne exclusively by the Owner causing such alteration. If one or more Units are combined, such Units may thereafter be separated physically only if restored to their original configuration as shown on the Map. The physical combination or separation of previously combined Units shall not alter the legal description of the Units, which shall retain their status as separate Units. Upon the combination of one or more Units by alteration or removal of a common wall, floor or ceiling, the perimeter boundary of such Units shall be the center line of such previously existing

wall, floor or ceiling. Upon the physical separation of one or more previously combined Units by the addition or closure of a common wall, floor or ceiling, the perimeter boundary of such Units shall be the unfinished wall, floor or ceiling. Unless otherwise required by the Act, no amendment of the Map shall be required to effect the combination or separation of Units in accordance with this Section 3.4. All actions taken hereunder must comply with applicable provisions under the Act.

3.5 Description of Condominium Unit. Every contract for the sale of a Condominium Unit and every other instrument affecting the title to a Condominium Unit shall describe that Condominium Unit by the Unit designation shown on the Condominium Map, with appropriate reference to the Condominium Map and this Declaration, as each appears in the records of the County Clerk and Recorder of the County of Garfield, Colorado.

Condominium Units shall be described in the following fashion:

Condominium Unit _____, Town Center Lot 19 Building
Condominium, according to the Condominium Map appearing in the
records of the Clerk and Recorder of the County of Garfield,
Colorado at Reception No. _____, as defined and described in
the Condominium Declaration for Town Center Lot 19 Building
Condominium, appearing in such records at Reception No.
_____.

Such description will be construed to describe the Unit, together with the Limited Common Elements designated to such Unit and the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Condominium Unit and all limitations on such ownership as described in this Declaration.

3.6 Separate Assessment and Taxation Notice to Assessor. Declarant shall give written notice to the Assessor of the County of Garfield, Colorado, of the condominium ownership of this Property, as is provided by law, so that each Unit and its percentage of undivided interest in the Common Elements shall be a separate parcel and subject to separate assessment and taxation.

3.7 Title. A Condominium Unit may be held and owned by one or more persons, firms, corporations, partnerships, associations or other legal entity, in any real property tenancy relationship recognized under the laws of the State of Colorado.

3.8 Nonpartitionability of Common Elements. Common Elements shall be owned in common by all of the owners of the Condominium Units and shall remain undivided, and no owner shall bring any action for partition or division of the Common Elements. No Unit may be partitioned or subdivided, except as provided in Sections 3.3 and 3.4 above.

Notwithstanding the foregoing, the Association shall have the right to dedicate, sell or otherwise transfer all or any part of the Common Elements to any public, governmental, or quasi-governmental agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. However, such dedication or transfer of the Common Elements shall not be effective unless an instrument has been signed by members holding aggregate interest equal to at least seventy-five percent (75%) of the votes of the Owners, agreeing to such dedication, sale or transfer. Notwithstanding the preceding sentence, the granting of easements by a majority of the Executive Board for public utilities, for access by pedestrians or for other public purposes not inconsistent with the intended use of the Common Elements shall not be deemed a transfer requiring such consent of the Owners within the meaning of this Section.

ARTICLE 4 DECLARANT'S DEVELOPMENT RIGHTS

The Declarant may exercise the development rights detailed herein with regard to property owned by the Declarant without the consent of any Unit Owners at the Condominium Project or any First Mortgagees or Mortgagees as defined herein. These development rights held by the Declarant apply to the Property defined in Exhibit A, the Building, including all General Common Elements and Limited Common Elements at the Project, detailed in Town Center Lot 19 Building Condominium Map. The rights contained herein may be exercised by Declarant for so long as any Commercial or Residential Units are owned by the Declarant. The development rights of the Declarant include, but are not limited to, the right to combine or subdivide the existing Units detailed on the Condominium Map; the right to add or create new Units; the right to convert Commercial Units into Residential Units, or Residential Units into Commercial Units; and the right to convert Commercial or Residential Units into General Common Elements. All development rights shall be exercised by the Declarant in accordance with the rules detailed in the Act, as amended from time to time, including but not limited to, Declarant's obligation to reallocate the ownership of the General Common Elements among Unit Owners if necessary. Declarant shall also have the right to amend the Condominium Map, and amend the Condominium Declaration to conform with the changed development without the consent of Unit Owners, First Mortgagees or Mortgagors. These development rights shall benefit the Declarant, its successors or assigns, until the Declarant no longer owns any Condominium Units, commercial, or residential, at the Condominium Project. This Article shall control, concerning the Declarant's development rights at the Condominium Project, over any other provisions of this Declaration. All of Declarant's development rights reserved herein shall be subject to and exercised in accordance with all applicable laws, ordinances and regulations of the Town of Carbondale, Colorado.



675925 06/09/2005 02:11P B1695 P435 M ALSDORF
21 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

ARTICLE 5 OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS AND CONDOMINIUM PROJECT

5.1 **General Common Elements.** Every Owner and the family members, guests, tenants, and licensees of each Owner shall have a perpetual right and easement of access over, across, and upon the General Common Elements for the purpose of getting to and from the Condominium Unit and parking area of such Owner and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Condominium Unit; provided, however, that such right and easement shall be subject to the following:

5.1.1 The covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the Condominium Map;

5.1.2 The right of the Association to regulate on an equitable basis the use of parking spaces which are General Common Elements from time to time;

5.1.3 The right of the Master Association to adopt, from time to time, any and all rules and regulations concerning the Master Common Elements as the Master Association may determine is necessary or prudent;

5.1.4 The right of the Association to adopt, from time to time, any and all rules and regulations concerning the Common Elements, Limited Common Elements, the Building or any property owned by the Association, and any facilities located thereon, as the Association may determine are necessary or prudent;

5.1.5 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 Property maintenance or operation of the Project;

5.1.6 The right of the Association or Master Association to require any Unit Owners to manage, at such Unit Owner's expense, its own sanitation matters and to set standards for such management.

5.2 **Limited Common Elements.** A "Limited Common Element" means a portion of the Common Elements, designated in this Declaration, or on the plat or Map, or by the Act, for the exclusive use of one or more but fewer than all of the Units. These may be designated as Commercial or Residential Limited Common Elements as defined in Sections 2.9 and 2.47 respectively.



675925 06/09/2005 02:11P B1695 P436 M ALSDORF
22 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

5.2.1 Subject to the provisions of this Declaration, every owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to the Owner's Condominium Unit. The Map shall specify to which Condominium Unit or Units each Limited Common Element is allocated.

5.2.2 Individual parking spaces located within the parking areas of the Condominium Project are designated on the Map as Limited Common Elements, each appurtenant to a Residential Condominium Unit and reserved for the exclusive use of the Owners and the tenants, guests, lessee, licensees, permittee and invitees of the Owners of such Residential Condominium Unit.

5.2.3 Declarant hereby reserves the right and grants to the Association the right to redesignate General Common Elements as Limited Common Elements.

ARTICLE 6 THE ASSOCIATION

6.1 **Membership.** Every Owner of a Condominium Unit shall be a member of the Association and shall remain a member for the period of his ownership of a Condominium Unit. Each Condominium Unit shall be entitled to vote in accordance with the Allocated Interests set forth in Exhibit "B" attached hereto, to be exercised by the Owner or owners thereof;

6.2 **Executive Board.** The affairs of the Association shall be managed by an Executive Board which shall consist of the number of members which is set forth in the Association's Articles of Incorporation ("Articles") or Bylaws ("Bylaws"), as may be amended from time to time.

6.2.1 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 (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Condominium Units in the Condominium Project to Owners other than Declarant; (b) two (2) years after the last conveyance of a Condominium Unit by a Declarant in the ordinary course of business; (c) two (2) years after Declarant's right to add Condominium Units to the Project was last exercised; or (d) seven (7) years after the first conveyance of a Condominium Unit to an Owner other than a 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. However, 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 twenty-five percent (25%) of the Condominium Units that may be created to owners other than a



675925 06/09/2005 02:11P B1695 P437 M ALSDORF
23 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

Declarant, at least one member, and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Owners other than a Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Condominium Units that may be created to Owners other than a Declarant, not less than thirty three and one third percent (33⅓%) of the members of the Executive Board must be elected by owners other than a Declarant. Not later than the termination of any period of Declarant's control as provided above, the owners (including Declarant) shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

6.2.2 After the period of Declarant control has ended, the Executive Board shall be made up of three (3) classes of Directors as follows:

6.2.2.1 *Residential Director Class*: The Residential Director Class shall consist of at least one (1) Director and any Directors in this Class shall be an Owner of a Residential Unit ("Residential Director"). All Residential Directors shall be nominated and elected solely by the Residential Unit Owners.

6.2.2.2 *Commercial Director Class*: The Commercial Director Class shall consist of at least one (1) Director and any Directors in this Class shall be an Owner of a Commercial Unit ("Commercial Director"). All Commercial Directors shall be nominated and elected solely by the Commercial Unit Owners.

6.2.2.3 *At Large Director Class*: The At Large Director Class shall consist of one (1) Director and an At Large Director shall be an owner of either a Commercial Unit or a Residential Unit ("At Large Director"). All At Large Directors shall be nominated and elected by all of the Unit Owners, both Commercial Unit Owners and Residential Unit Owners.

6.2.3 At the end of the period of Declarant control, the Executive Board shall consist of a minimum of three Directors and shall be made up of the three (3) classes of Directors listed above. At all times, there shall be at least one (1) Residential Director and at least one (1) Commercial Director on the Executive Board. Other Executive Board members may consist of Residential, Commercial, or At-Large Directors. The Residential Directors and At-Large Directors shall have the sole and exclusive authority on all Residential Matters as defined in this Declaration. The Commercial Directors and At-Large Directors shall have the sole and exclusive authority on all Commercial Matters as defined in this Declaration. All members of the Executive Board shall be entitled to vote on General Matters as defined in the Declaration. A presumption shall exist in favor of the generality of issues and each issue shall be presumed to be a General Matter unless determined by the Executive Board to be a Residential Matter or a Commercial Matter by clear and objective



675925 06/09/2005 02:11P B1695 P438 M ALSDORF
24 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

standards. Any time the Directors make a determination that a matter is Residential, Commercial or General for the purpose of assessing a Residential, Commercial or General Assessment against the corresponding class of Unit owners, such determination shall require, in addition to the majority vote of the Directors, the affirmative vote of at least one (1) Commercial Director and one (1) Residential Director.

6.2.4 Subject to Declarant's Control Period and Special Rights of Declarant contained herein, this Section 6.2 shall not be amended without the approval of such amendment 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 (such vote being based on each Owner's Allocated Interest for each Unit reflected in Exhibit B hereto).

6.3 **Authority.** The business affairs, administration and management of the Common Elements shall be vested exclusively in the Association.

6.4 **Classes of Membership in Association.** There shall be three (3) classes of Members to-wit:

6.4.1 **General Membership.** General Membership shall be all the Owners, including the Declarant.

6.4.2 **Residential Membership.** Residential membership shall be limited to Owners of Residential Units.

6.4.3 **Commercial Membership.** Commercial membership shall be limited to Owners of Commercial Units.

Each Owner, whether such Owner owns a Residential or a Commercial Unit, shall be a member of the General Membership as well as either the Residential Membership or the Commercial Membership. Therefore, a Residential Unit Owner shall be entitled to vote on General Matters as well as on Residential Matters and a Commercial Unit owner shall be entitled to vote on General Matters as well as on Commercial Matters.

6.5 **Voting Rights in Association.** The vote of the General Membership shall be required for the determination of General Matters affecting the entirety of the Project or the General Common Elements. Residential Matters shall be determined by the vote of the Residential Membership. Commercial Matters shall be determined by the vote of the Commercial Membership. A presumption shall exist in favor of the generality of issues and each issue shall be presumed a General Matter unless determined by the Executive Board to be a Residential Matter or a Commercial Matter by clear and objective standards.

When voting on General Matters, each Owner in the General Membership shall be allowed to vote and the Owner's vote shall be equal to the Owner's Allocated Interest listed on Exhibit B. In votes concerning Residential Matters, the Residential Membership shall be allowed to vote and the Residential Unit Owner's vote shall be equal to such Residential Unit Owner's Allocated Interest divided by the total Allocated interests of all Residential Unit Owners at the Project. In votes concerning Commercial Matters, the Commercial Membership shall be allowed to vote and the vote of a Commercial Unit Owner shall be equal to such Commercial Unit Owner's Allocated Interest divided by the total Allocated Interests of all Commercial Unit Owners at the Project. Except as otherwise specifically provided in this Declaration, the Association's Bylaws or Articles of Incorporation, or as required by law, any actions approved by an affirmative vote of the members of the appropriate membership class, present and voting, polling a majority of the ownership interest within the appropriate class of the membership, shall be an action approved by a vote of such class of membership.

Where Condominium Units are owned by more than one owner, then one such person shall be designated as the voting member in respect of such Unit, by a written instrument delivered to the Secretary of the Association. In the absence of such designation, the board may disallow the votes cast by such Owner. When the same person owns more than one Condominium Unit, the Owner shall be entitled to the requisite number of votes on Association matters for each Condominium Unit owned. The votes of any Owner not a natural person may be cast by any designated representative of such owner which designation shall be in writing and delivered to the Board prior to any such vote. In the absence of such designation, the Board may disallow the votes cast by such Owner.

6.6 Owner's and the Association's Address for Notices. All Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other owners for notices, demands, and all other communications regarding the Association matters. The Owner or Owners of a Unit shall furnish such registered address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the unit.

If no address is registered or if all of the owners of a Unit cannot agree, then the address on the Warranty Deed for the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

If the address of the Unit is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the unit or, if the Unit is unoccupied, if the notice is held and available for the owners at the principal office of the Association.

All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners and Eligible Mortgage Holders:

Executive Board
Town Center Lot 19 Building Condominium Association
c/o Lawrence R. Green, Esq.
818 Colorado Avenue
Glenwood Springs, CO 81601

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

ARTICLE 7 ASSESSMENTS

7.1 **Obligation.** Each Owner, by accepting a deed for a Unit, is deemed to covenant to pay to the Association (a) the Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association, including, if assessed to an Owner, any Residential or Commercial Assessment; (b) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (c) Default or Reimbursement Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Declaration or other Association Documents or because the Association has incurred an expense on behalf of the Owner under the same.

7.2 **Purpose of Assessments.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Building or for the improvement and maintenance of the Common Elements, as more fully set forth in this Article below.

7.3 **Budget.** Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (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 that 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. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

7.4 **Annual Assessments.** Annual Assessments for Common Expenses ("Annual Assessments" or "General Assessment") made shall be based upon the estimated cash requirements

as the Executive Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements; expenses of management; taxes and special governmental, assessments pertaining to the Common Elements and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, common lighting within the Common Elements; routine repairs and renovations relating to Common Elements; common water and utility charges for the Common Elements; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from at previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements relating to the Common Elements on a periodic basis, as needed.

7.5 **Apportionment of Annual Assessments.** Unless designated by the Executive Board as either a Residential or Commercial Assessment as provided for below, each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided proportionately among the Units by each Unit's Allocated Interest provided in Exhibit "B" attached hereto.

7.6 **Residential Assessment.** In the event a Common Expense disproportionately benefits the Residential Unit Owners, as determined by the Executive Board, such expense shall be designated by the Executive Board as a Residential Common Expense and assessed by the Executive Board to the Residential Unit Owners as a Residential Assessment. Such Residential Assessment shall be paid by the Residential Unit Owners in proportion to each Residential Unit Owner's Allocated Interest divided by the total Allocated Interests of all Residential Unit Owners.

7.7 **Commercial Assessments.** In the event a Common Expense disproportionately benefits the Commercial Unit Owners, as determined by the Executive Board, such expenses shall be designated by the Executive Board as a Commercial Common Expense and assessed by the Board as a Commercial Assessment against the Commercial Unit Owners. Such Commercial Assessment shall be paid by the Commercial Unit Owners in proportion to each Commercial Unit Owner's Allocated interest divided by the total Allocated Interests for all Commercial Unit Owners.

7.8 **Allocation of Assessments for Limited Common Elements.** No Owner shall be charged with any assessment for a Limited Common Element unless this Declaration or the Map provides that the Limited Common Element is for the use of such Owner's Unit. Assessments for the maintenance of Limited Common Elements, Residential and Commercial, shall be paid to the Association by Owners having the exclusive use of such Limited Common Elements. Assessments as a result of expenses incurred for the benefit of Residential Limited Common Elements shall be assessed to the Residential Unit or Residential Units to which such Residential Limited Common Elements are designated in the Declaration or on the Map. Assessments as a result of expenses incurred for the benefit of Commercial Limited Common Elements shall be assessed to the

Commercial Unit or Commercial Units to which such Commercial Limited Common Elements are designated in the Declaration or on the Map.

7.9 **Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 7.9 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other Sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in this Article. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

7.10 **Default or Reimbursement Assessments.** All monetary fines assessed against an Owner pursuant to the Declaration and/or Association documents, or any expense of the Association which is the obligation of an owner or which is incurred by the Association on behalf of the owner pursuant to the Declaration and/or the Association Documents, shall be a Default or Reimbursement Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

7.11 **Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid within ten (10) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

7.11.1 Assess a late charge for each delinquency in such amount as the Association deems reasonable and appropriate;

7.11.2 Assess an interest charge from the date of delinquency at the yearly rate of eighteen percent (18%), or such other rate as the Executive Board may establish or as may be required by law;

7.11.3 Suspend the voting rights of the Owner during any period of delinquency;

7.11.4 Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;



675925 06/09/2005 02:11P B1695 P443 M ALSDORF
29 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

7.11.5 Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

7.11.6 File a statement of lien with respect to the Unit and proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. To evidence the lien created under this Section 7.11, the Association may, but shall not be required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued interest and penalty on the indebtedness, (iv) the name of the Owner of the Unit, and (v) a description of the Unit. The notice shall be signed and acknowledged by the President or a Vice-President of the Association or by the Manager, and the Association shall serve the notice upon the Owner by certified mail to the address of the Unit or to such other address as the Association may have in its files for such Owner. After the Association mails the Owner such a notice, the Association may record the same in the office of the Clerk and Recorder of Garfield County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. Following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

7.12 **Personal Obligation.** The amount of any Assessment chargeable against any Unit shall be a personal and individual debt of the Owner of such unit. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

7.13 **Subordination of Lien.** The lien of the Assessments provided for in this Declaration shall be subordinate to (a) the lien of real estate taxes and special governmental assessments, (b) liens and encumbrances recorded before the recordation of the Declaration, and, (c) liens for all sums unpaid for a first Mortgage of record, recorded before the date on which the assessment sought to be enforced became delinquent, subject to terms and provisions of the Act. The transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit pursuant to foreclosure of any first Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens as provided in the Act. The amount of such extinguished lien may

be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

7.14 **Successor's Liability for Assessments; Subordination of Lien.** The provisions of the Act shall govern and control (a) the obligations of successors to the fee simple title of a Unit on which Assessments are delinquent and (b) the subordination by the lien of the Assessments provided for in this Declaration.

7.15 **Notice to Mortgagee.** The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee shall first have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments.

7.16 **Payment by Mortgagee.** Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

7.17 **Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Executive Board and upon the written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Executive Board of the Association shall issue a written statement setting forth: (a) the amount of the unpaid Assessments, if any, with respect to such Unit; (b) the amount of the current installments of the Annual Assessments and the date that the next installment is due and payable; (c) the date of the payment of any installment of any Special Assessments then existing against the Unit; and (d) any other information deemed proper by the Association. Unless such statement shall be issued (which shall include posting in the United States mail) within fourteen (14) business days, all unpaid Assessments which become due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest in the Unit subsequent to requesting such statement. If the request is made by a prospective purchaser, both the lien for the unpaid Assessment and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the fourteen (14) business day period provided for above, and if after that period an additional written request is made by such purchaser and is not complied with within ten (10) days and the purchaser subsequently acquires the Unit.

7.18 **Working Capital Fund.** The Association or Declarant shall require the first Owner of each Unit (other than a Declarant), to make at the time of purchase, a non-refundable contribution to the Association in an amount equal to three (3) times the Monthly Assessment against the Unit in effect at the time of closing of such purchase. At the time Declarant's control of the Association terminates, the Declarant will transfer control of such funds to the Association (if not transferred earlier) and a Declarant then owning Condominium Units in addition will pay the Association an

amount equal to three (3) times the Monthly Assessment against all Units then owned by it (unless such payment has previously been made with respect to any such Units). Amounts paid into the working capital fund shall 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 of working capital funds shall not relieve an Owner from making regular payments of Assessments as the same become due.

All subsequent transferees, immediately upon becoming a Unit Owner, shall make a non-refundable contribution to the working capital fund in an amount equal to three (3) times the Monthly Assessment for the Unit at the time of such transfer. Upon the transferee's payment of the three months Assessments, the transferring Owner (including a Declarant if Declarant previously paid working capital funds for the sold Unit) shall be entitled to a credit from the Association for the contribution to the working capital fund, without interest, made by the transferring owner. Declarant shall not use any of the working capital funds to defray expenses, reserve contributions, or construction costs or to make up any budget deficits.

ARTICLE 8 INSURANCE

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 a 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.

8.1.1 A policy of property insurance covering all insurable improvements located within the Condominium Project 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 full replacement cost basis without deduction for depreciation, and a "Steam Boiler and Machinery Coverage Endorsement" with minimum coverage per incident for the Building, of the insurable value of the Condominium Project. 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:

8.1.1.1 loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and



675925 06/09/2005 02:11P B1695 P446 M ALSDORF
32 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

8.1.1.2 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 "Special Cause of Loss Endorsement", where such is available.

8.1.2 A comprehensive policy of public liability insurance covering the Condominium Project insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) including bodily injury, including death to persons, persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include legal liability of the insured's for property damage, bodily injuries and deaths of person in connection with the operation, management, maintenance or use of the Condominium Project, and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, legal liability arising out of lawsuits related to employment contracts of the Association, comprehensive automobile liability insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen'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.

8.1.3 A policy may provide employee dishonesty coverage 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 greater of:

8.1.3.1 the estimated maximum of funds, including reserves, in the custody of the Association at any given time, or

8.1.3.2 three (3) month's aggregate Assessments on all Units plus reserves.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a Managing Agent, the Association may require the Managing Agent to purchase at its own expense a policy of employee dishonesty coverage which fully complies with the provisions of this Paragraph 8.1.3.

8.1.4 A policy providing directors and officers liability insurance in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

8.1.5 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 reasonably available.



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 and the Master Association as an additional 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 interests in the Common Elements or membership in the Association. The policy or policies shall contain a standard non-contributory 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 to each First Mortgagee. 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 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, each person or entity who is a Declarant, the Association, and their respective officers, directors and members and any of such parties, their respective families, agents, employees or tenants. The liability insurance policy provided for under Section 8.1(b) shall insure the Executive Board, the Association, and any Management Agent and their respective employees, agents and all persons acting as agents. Each person or entity who is a Declarant shall be included as an additional insured in its capacity as an owner and, if applicable, a 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.

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 \$10,000.00 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 of the Owners. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, and assess such loss as a Default Assessment against such negligent owner and his Condominium Unit, subject to all provisions of this Declaration applicable to such Assessments.

8.4 **Insurance Trustee.** The Executive Board shall have authority to authorize an insurance trustee to assist and consult with it and/or to 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 this Declaration and the Act. The Association and any insurance trustee designated by the Executive Board shall have exclusive authority as agent and attorney-in-fact for the Owners to purchase and maintain all insurance required under this Article, to negotiate, settle and compromise any claims



under such insurance, to receive all proceeds from such insurance and apply them as provided under this Declaration, to execute releases of liability in connection with the negotiation and settlement of claims, and to execute all documents and perform all acts that may be necessary or desirable to carry out the Association's and insurance trustee's rights and duties under this Declaration.

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 contribution, 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 and for reimbursement to the Association for the deductible under the Association's insurance policy; 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 of such 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.

8.6 **Insurance to be Maintained by Owners.** Insurance coverage on fixtures and furnishings, including carpet, draperies, improvements and betterment, 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, and the Association, its Executive Board and/or the Managing Agent of the Association shall have no responsibility therefor; 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 to the Owner(s) covered thereby in such proportions as the Executive Board shall reasonably determine.

8.7 **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 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.

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



675925 06/09/2005 02:11P B1695 P449 M ALSDORF
35 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

ARTICLE 9 MECHANIC'S LIENS

9.1 **No Liability.** If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein, no other Owner of any Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit, or any improvements therein. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Elements or any Unit other than that of such Owner with any mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is hereby expressly denied.

9.2 **Indemnification.** If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other unit Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees, resulting therefrom.

9.3 **Association Action.** Labor performed or materials furnished for the Common Elements, if duly authorized by the Association, in accordance with this Declaration or its bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law of an amount equal to each Owner's Allocated Interest as described in Exhibit B against each of the Units. In the event a lien is effected against two (2) or more Units, the Owners of the separate Units may remove their Units from the lien by payment of the fractional or proportional amount attributable to each of the Units affected. Subsequent to payment, discharge or other satisfaction, the Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Unit not so released or discharged.

ARTICLE 10 EASEMENTS

10.1 **Recorded Easements.** As of the recording of this Declaration, the Property is subject to those easements and other matters set forth on Exhibit C attached hereto and incorporated herein by this reference.

10.2 **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:

10.2.1 settling of the Building,

10.2.2 alteration or repair to the Common Elements,

10.2.3 repair or restoration of part of the Building 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, the Building or other improvements comprising part of the Condominium Project 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. In 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.

10.3 **Easements for Emergency Ingress and Egress.** The Association, through its duly authorized agents, shall have the right to enter without request, any Unit as may be reasonably necessary to locate and remedy any emergency originating in or threatening any Unit, Limited Common Elements, Common Elements or Master Common Elements. An Owner shall, upon request in advance, at a time convenient to the Owner, permit entry into a Unit for the purpose of performing non-emergency installation, alteration, or repair to the mechanical, electrical or utility services, which, if not performed, would impair the use of other Units, Limited Common Elements, Common Elements or Master Common Elements.

10.4 **Utilities.** There is hereby created a blanket easement for the benefit of the Owners 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,



675925 06/09/2005 02:11P B1695 P451 M ALSDORF
37 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

computer, cable, and master television antennae 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 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 of all of the Common Elements without conflict with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the earlier of conveyance by a Declarant of seventy-five percent (75%) of the Condominium Units to Owners other than a Declarant or when Declarant elects to surrender such right, at which time said reserved right shall vest in the Association. The easement provided for in this Section 10.4 shall in no way effect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

10.5 Maintenance Easement. An easement is hereby granted to the Association, its respective 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 the Association is obligated or permitted to perform pursuant to this Declaration, including the right of the Association to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.

10.6 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 Property for the purpose of the drainage of water onto the Property from the Common Elements.

10.7 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 (whether or not Common Elements) located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Condominium Project, the Common Elements or to any Unit. 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, if not otherwise paid by said Owner, in the sole discretion of the Executive Board, by adding such amount to such Owner's General Assessment. 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 notified of impending entry as early as is reasonably possible.



675925 06/09/2005 02:11P B1695 P452 M ALSDORF
38 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

10.8 **Declarant's Rights Incident to Completion of the Project.** Each person or entity who is a Declarant, for itself and its successors and assigns, shall have and hereby retains or is granted 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 to the completion of the Project, the sale of the Units, the exercise of Declarant's special rights under the Act, and the exercise of Declarant's development rights; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, any such Owner's family members, guests or invitees, to or of his Unit or the Common Elements. The rights under this section shall terminate upon conveyance by a Declarant of all Units to Owners other than a Declarant.

10.9 **Easements Deemed Created.** All conveyances of Units hereafter made, by a Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 10, even though no specific reference to such easements or to Article 10 hereof appears in the instrument of such conveyance.

ARTICLE 11 RESTRICTIVE COVENANTS

11.1 **Compliance with Provisions of Declaration and Bylaws.** Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Managing Agent or Executive Board in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved Owner.

11.2 Use and Occupancy.

11.2.1 Both residential and commercial uses are contemplated within the Project, and any functions, activities and uses permitted under any zoning or other laws, rules, or regulations applicable to Town Center Subdivision are expressly allowed, subject to the restrictions set forth in such laws, rules or regulations pertaining to the Commercial Units and the Residential Units. No rules and regulations relating to the Condominium Project shall be adopted which unfairly discriminate against any use permitted within either the Residential Units or the Commercial Units. All Owners will be subject to the rules and regulations of the Association.

11.2.2 All use and occupancy of the Common Elements shall be governed by the Declaration, Bylaws and Rules of the Association.

11.2.3 Nothing shall be done within or on the Common Elements or Units which could be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governmental body.

11.2.4 No noxious or offensive activity, nor any activity which would materially increase insurance rates, shall occur or be allowed on, in or upon the Common Elements or in the Units.

11.2.5 No animals of any kind shall be raised, bred or kept on any of the Common Elements or in the Units, except as hereinafter provided. A reasonable number of dogs, cats or other domestic household pets may be kept in a Unit, provided that: (i) they are not kept, bred or maintained for any commercial purpose; (ii) they do not make objectionable noises or otherwise constitute an unreasonable nuisance to other Owners; (iii) they are kept within the Unit, or if out-doors, on a leash or reasonable restraint held by a person capable of controlling the animal; and (iv) they are not in violation, of any other provision of this Declaration, or any Rules or Regulations established by the Executive Board.

11.3 **Declarant's Use.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for a Declarant, its employees, agent, and contractors, to perform such reasonable activities, and to maintain upon portions of the Project, such facilities as a Declarant deems reasonably necessary or incidental to the completion and sale of Condominium Units and the exercise of Declarant's development rights, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, signs, model units, sales offices, parking areas, construction offices, and construction trailers.

11.4 **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 Common Elements without the prior written approval of the Executive Board of the Association. Except for those improvements erected or installed by a Declarant in its completion of the Project, 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.

11.5 **Exterior Changes.** Except for those improvements erected, constructed or installed by a Declarant in the completion of the Project, no exterior additions to, alternations or decoration of the Building, including but not limited to any structural alternations to any Condominium Unit or Common Element, nor any changes in walls or other structures, nor installation of window mounted air conditioning units, awnings, or any exterior improvement of any type, shall be commenced, erected, placed or maintained, without prior written approval of the Executive Board of the Association.

11.6 **Signs and Advertising.** Except as hereinafter provided, no signs, including for sale or for rent signs, advertisements, billboards, unsightly object or nuisances of any kind shall be



675925 06/09/2005 02:11P B1695 P454 M ALSDORF
40 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

placed, erected or permitted to remain in or on any Condominium Unit, nor shall any sign(s) be permitted in or on the Master Common Elements or Common Elements, without the prior written approval of the Executive Board of the Association or Master Association or which violates the Town of Carbondale Sign Code. Notwithstanding the foregoing, reasonable signs or advertising materials used by a Declarant in connection with its sale of Condominium Units shall be permissible, provided that such use by a Declarant shall not interfere with the Owner's 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.

11.7 **Satellite Dishes.** No satellite dishes or any video, audio or other broadcast receiving equipment ("Satellite Dishes") shall be placed on the exterior of the Building without the prior written approval of the Executive Board. The Executive Board shall be able to limit the size and location of any Satellite Dish erected. The Executive Board shall further be able to require mandatory painting or screening of Satellite Dishes and require specific placement of a Satellite Dish to cause the least visual intrusion possible.

ARTICLE 12

MAINTENANCE RESPONSIBILITY

12.1 **Owner's Rights and Duties with Respect to Interiors.** Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales or leases to initial purchasers of the Condominium Units, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Initial Owner improvements and interior finish must receive all necessary building and other permits from the Town of Carbondale.

12.2 **Responsibility of the Owner.** The Owner at the Owner's expense shall maintain and keep in repair the interior of the Condominium Unit, including the fixtures and utilities located in the Condominium Unit, to the extent current repair shall be necessary in order to avoid damaging other Condominium Units or the Common Elements. All fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in repair by the Owner of that Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Building, or impair any easement or hereditament. Except as otherwise provided in this Declaration, an Owner, or, as the case may be, a class of Owners, shall also have the obligation to maintain and keep in repair all appurtenant Limited Common Elements at such Owner's, or class of Owner's, expense. No Owner shall alter any Common Elements without the prior written consent of the Association.



12.3 **Responsibility of the Association.** The Association, with approval of the Owners as required by this Declaration, shall maintain and keep in good repair, replace, and improve, as necessary, as a Common Expense, all parts of the Condominium Project not required in this Declaration to be maintained and kept in good repair by an Owner, or by Declarant.

ARTICLE 13

DAMAGE AND DESTRUCTION, OBSOLESCENCE, CONDEMNATION

13.1 **Appointment of Attorney-in-Fact.** Except as may otherwise be provided by law, each Owner, by his acceptance of the deed or other conveyance vesting in each Owner an interest in a Condominium Unit, does irrevocably constitute and appoint the Association with full, power of substitution as his true and lawful attorney in his name, place and stead (a) to deal with such interest upon damage to or destruction, obsolescence or condemnation of any real property as hereinafter provided, and (b) to enter into agreements regarding the Common Elements including but not limited to leases, rights of way agreements, and ingress and egress agreements with full power, right and authorization to execute, acknowledge and deliver any contract, deed, proof of loss, release or other instrument affecting the interest of such Owner, and to take any other action which the Association may consider necessary or advisable to give effect to the provisions of this Declaration. If requested to do so by the Association, each Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any damage or condemnation claim shall be final and binding on all Owners. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in the case of fraud or gross negligence.

13.2 **Damage and Destruction.** Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction or replacement unless under the conditions set forth in subparagraph 13.2.2 below, the specified percentage of Owners and Mortgagees fail to approve repair, reconstruction or replacement.

13.2.1 Except as provided in subparagraph 13.2.2 below, in the event of damage or destruction due to fire or other disaster, such damage or destruction shall be promptly repaired and reconstructed by the Association. If the proceeds of insurance are insufficient to effect such repair and reconstruction, the Association shall levy a special assessment against all the Owners to pay any deficiency required to accomplish the repair and reconstruction. The amount of such deficiency assessment shall be a Common Expense and made pro rata, according to each Owner's Allocated Interest, and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or reconstruction of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment.

13.2.2 Replacement or repair of the damaged improvements shall be performed under this Section 13.2 unless:

13.2.2.1 The Common Interest Community is terminated, in which case the Association shall follow the provisions of the Act;

13.2.2.2 Repair or replacement would be illegal under any state or local statute or ordinances governing health or safety;

13.2.2.3 80% of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt and 80% of the First Mortgagees of all Condominium Units (based on each respective Owner's Allocated Interest listed on Exhibit B that will not be rebuilt, vote not to rebuild; or

13.2.2.4 Prior to the conveyance of any Unit to a person other than the Declarant, the holder of a Deed of Trust or Mortgage on the damaged portion of the Common Interest Community rightfully demands all or substantially all of the insurance proceeds.

If the improvement is not rebuilt hereunder, the Condominium Units shall be sold by the Association, as attorney-in-fact for all the Owners, free and clear of the provisions contained in this Declaration, the Map, and Articles of Incorporation and the Bylaws. The insurance settlement proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into a separate account in the name of the Association, and shall be further identified by the alphabetic designation of the Unit and the name of the Owner. Such apportionment shall be based upon each Condominium Unit Owner's Allocated Interest. The total funds of each account shall be used and disbursed, without contribution from one account to another by the Association, as attorney-in-fact in the following order:

13.2.2.1 For payment of taxes and special assessment liens in favor of any assessing entity;

13.2.2.2 For payment of the balance of the lien of any Mortgagee;

13.2.2.3 For payment of unpaid Common Expenses;

13.2.2.4 For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

13.2.2.5 The balance remaining, if any, shall be paid to the Condominium Unit Owner.

13.3 **Obsolescence.**

13.3.1 If at any time subsequent to the expiration of twenty-five (25) years from the date of the first recording of this Condominium Declaration, Owners representing an aggregate ownership of seventy-five percent (75%) or more of the Condominium Units agree that the Condominium Units are obsolete and that the same should be removed or reconstructed, and adopt a plan for reconstruction, which plan has the approval of sixty-seven percent (67%) of the First Mortgagees (based on each respective Owner's Allocated Interest as listed on Exhibit B) then all of the Owners shall be bound by the terms and provisions of such plan. Any Assessments made in connection with such plan shall be a Common Expense of the Owners of Condominium Units and made pro rata according to each owner's undivided percentage interest in the Common Elements as reconstructed, which percentage interest shall be based upon the number of square feet of floor area in the reconstructed Unit as a percentage of the total square feet of floor area in all the Units.

13.3.2 Any time subsequent to the expiration of twentyfive (25) years from the date of the recording of this Condominium Declaration, Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Condominium Units may agree that the Condominium Units are obsolete and that the same should be sold. Such agreement must have the approval of sixty-seven percent (67%) of the First Mortgagees (based on each respective Owner's Allocated Interest as listed on Exhibit B). In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, all of the Condominium Units shall be sold by the Association, as attorney-in-fact of all the Owners, free and clear of the provisions contained in this Declaration, the Map and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's Allocated Interest, and such apportioned proceeds shall be paid into separate accounts representing each Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the designation of the Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as provided in subparagraph (b)(i) through (b)(v) of Section 13.2 of this Article 13.

13.4 **Condemnation.** If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Property or Building shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of a taking or condemnation, the following provisions shall apply:

13.4.1 All compensation, damages, or other proceeds from such taking or condemnation, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

13.4.2 In the event that the entire Building is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of taking or condemnation, the condominium ownership of the Building shall terminate. The Condemnation Award shall be apportioned only among the Owners of the Condominium Units in the Building in proportion to their respective undivided percentage interests in the Common Elements of the Building.

13.4.3 In the event that part but less than the entire Building is taken or condemned, or sold or otherwise disposed of in lieu or in avoidance of a taking or condemnation, 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 injury to the Building and real property on which the Building is constructed shall be apportioned among owners of Condominium Units in the Building in proportion to their respective undivided percentage interest in the Common Elements of the Building, (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 injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular 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. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

ARTICLE 14 MORTGAGEE'S RIGHTS

14.1 **Notices.** Any First Mortgagee of a Mortgage encumbering any Unit, including any Common Element or Property owned by the Association, upon filing a written request therefor with the Association (an "Eligible First Mortgagee"), shall be entitled to any of the following:

14.1.1 Copies of budgets, notices of Assessments, insurance certificates, or any other notices or statements provided under this Declaration by the Association to the Owner of the Condominium Unit covered by the Mortgage;

14.1.2 Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners;

14.1.3 Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;

14.1.4 Notice of the decision of the Owners or the Association to make any material, amendment to this Declaration, the Bylaws or the Articles of Incorporation of the Association;

14.1.5 Notice of substantial damage to or destruction of the Unit, or any part of the Common Elements;

14.1.6 Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Elements;

14.1.7 Notice of any default of the holder's Owner which is not cured by the Owner within thirty (30) days after the giving of notice by the Association to the Owner of the existence of the default;

14.1.8 The right to examine the books and records of the Association at any reasonable time.

14.2 **Mortgagee Requests.** The request of a first Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees on the same Condominium Unit, the Association shall honor the earliest request received.

14.3 **No Impairment of Lien.** No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgagee taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Condominium Unit and listing the name or names of the Owner or Owners thereof and giving notice of such violation, breach or failure to comply. However, any purchaser on foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration.



14.4 **Consent of Mortgagees Required.** Subject to the limitations of the Act, unless at least sixty-seven percent (67%) of the Eligible First Mortgagees (based on each respective Owner's Allocated Interest as listed on Exhibit B), have given their written approval, neither the Association nor any Owner shall:

14.4.1 change the pro rata interest or obligations of any Condominium Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;

14.4.2 by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or Limited Common Elements; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause;

14.4.3 use hazard insurance proceeds for losses to any Unit, or to the Common Elements for any purpose other than the repair, replacement or reconstruction of the Common Elements except as is otherwise provided herein.

Notwithstanding anything to the contrary contained in this Section or elsewhere in this Declaration respecting the rights of First Mortgagees, if the Association notifies an Eligible First Mortgagee of an action that it proposes regarding any of the foregoing events, in writing, delivered by registered or certified mail, return receipt requested, and such Eligible First Mortgagee fails to respond within thirty (30) days of the date on which such notice was mailed, then such Eligible First Mortgagee shall be deemed to have approved the action proposed by the Association.

ARTICLE 15 MASTER DECLARATION

Each Owner, by virtue of accepting a deed to a Unit, recognizes that (a) the Unit is subject to the Master Declaration, and the Master Documents and all conditions, covenants, and restrictions contained therein., and (b) by virtue of ownership, the Owner automatically becomes subject to the Master Declaration and the rules and regulations as provided in the Master Documents. Each Owner, by virtue of accepting a deed to a Unit, acknowledges that such Owner has received and reviewed copies of the Master Documents. The Owner agrees to perform all obligations required of the Owners by the rules and regulations of the Master Association, as they may from time to time exist, including, but not limited to, the obligation to pay any and all Assessments as required under the Master Declaration which shall be assessed to Town Center Lot 19 Building Condominium Association and to comply with all Architectural Review, Design Requirements and Use Restrictions set forth in the Master Declaration.



675925 06/09/2005 02:11P B1695 P461 M ALSDORF
47 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

ARTICLE 16 DURATION OF COVENANTS AND AMENDMENT

16.1 **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.

16.2 **Amendment.** Subject to any provisions of the Act under which amendments to this Declaration are otherwise required or allowed by the Declarant, Association, or the Owners and subject to Section 14.4 herein, 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 (such vote of Owners being based on each Owner's Allocated Interest for each Unit reflected in Exhibit B hereto). Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or the Plat and Map to the fullest extent permitted under the Act.

16.3 **Binding Upon and Inure to the Successors.** The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of Declarant, the Association, all Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interest, to any person, corporation, partnership, association or other entity, in accordance with the provisions of the Act.

ARTICLE 17 MISCELLANEOUS

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 the applicable manner provided in this Declaration or by law.

17.2 **Supplemental to Colorado Common Interest Ownership 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.

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, condition, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as they may be amended from time to time.



675925 06/09/2005 02:11P B1695 P462 M ALSDORF
48 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

17.4 **Enforcement.** Except as provided below, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles, Bylaws, or rules and regulations of the Association, as amended, shall be by a proceeding at law or in equity filed in the District Court for the County of Garfield, State of Colorado, against any person or persons violating or attempting to violate any such provision. The Association or 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, any such charges shall be a perpetual lien in favor of the Association against any Condominium Unit which is not in compliance with the documents referenced herein. In any such action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorney fees incurred as a result of such action, as well as any and all other sums awarded by the Court.

Any dispute between the Association and an Owner or Owners and any dispute between Owners may be submitted to binding arbitration in accordance with the laws of the State of Colorado. The costs of such arbitration shall be borne equally by the parties to the arbitration and each party shall bear its own attorney fees. Such arbitration shall be heard in Garfield County, Colorado.

17.5 **Non-Waiver.** Failure by a 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 event be deemed to be a waiver of its right to enforce its rights thereafter.

17.6 **Severability.** The provisions of this Declaration shall be deemed to be independent and severable. If any one or more of the provisions hereof, shall be held invalid, unenforceable or illegal by any court of competent jurisdiction such ruling 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.

17.7 **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.

17.8 **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 describe the scope of this Declaration or the intent of any provision hereof.

17.9 **Conflicts in Documents.** In the case of any conflict between this Declaration, the Master Declaration, the Master Documents, or the Articles or Bylaws of the Association, this



675925 06/09/2005 02:11P B1695 P463 M ALSDORF
49 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

Declaration shall control, in case of any conflict between the Articles and Bylaws of the Association, Incorporation shall control.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set its hand and seal this 3rd day of June, 2005.

TOWN CENTER BUILDERS, LLC,
a Colorado limited liability company

By: William G. Smith, Jr.
William G. Smith, Jr.
Title: President



675925 06/09/2005 02:11P B1695 P464 M ALSDORF
50 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT A

Legal Description

Lot 19

Town Center Subdivision Filing No. 1
according to the Final Plat recorded in the office of the Garfield
County Clerk and Recorder as Reception No. 623529 on March 25,
2003.



675925 06/09/2005 02:11P B1695 P465 M ALSDORF
51 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT B

Allocated Interests Lot 19 Building Condominium

	SQUARE FOOTAGE	ALLOCATED INTEREST	% VOTE General Matters	
Residential	7,312	54.6%		
Commercial	6,095	45.4%		
Total	13,407	100%		
RESIDENTIAL UNITS				% VOTE Residential Matters
Unit A	1,590	11.9%	11.9%	21.7%
Unit B	1,251	9.3%	9.3%	17.1%
Unit C	1,248	9.3%	9.3%	17.1%
Unit D	1,563	11.7%	11.7%	21.4%
Unit E	1,660	12.4%	12.4%	22.7%
Total	7,312	54.6%	54.6%	100%
COMMERCIAL UNITS				% VOTE Commercial Matters
Unit B1	1,158	8.6%	8.6%	19.0%
Unit B2	596	4.4%	4.4%	9.8%
Unit B3	595	4.4%	4.4%	9.8%
Unit B4	554	4.1%	4.1%	9.1%
Unit G1	1,274	9.5%	9.5%	20.9%
Unit G2	678	5.1%	5.1%	11.1%
Unit G3	678	5.1%	5.1%	11.1%
Unit G4	562	4.2%	4.2%	9.2%
Total	6,095	45.4%	45.4%	100%



675925 06/09/2005 02:11P B1695 P466 M ALSDORF
52 of 52 R 261.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT C

Recorded Easements

1. All Easements, Rights-of-Way and other matters shown on the Plat of the subject property recorded in the Garfield County records on March 25, 2003 under Reception No. 623529.
2. All Easements, Rights-of-Way and other matters shown on the Condominium Map of Town Center Lot 19 Building Condominium recorded in the Garfield County records on even date herewith.