



CONDOMINIUM DECLARATION

FOR

MARKET STREET LOFTS CONDOMINIUMS

Basalt, Colorado

40/201-

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CONDOMINIUM DECLARATION
FOR
MARKET STREET LOFTS CONDOMINIUMS

THIS DECLARATION FOR MARKET STREET LOFTS CONDOMINIUMS is made and entered into effective as of the 23rd day of May, 2008, by WILLITS TOWN CENTER PARTNERS LLC, a Colorado limited liability company (collectively the "Declarant").

ARTICLE 1.
GENERAL PURPOSES, SUBMISSION

1.1 **General Purposes.** Declarant is the owner of certain improved real estate described on **Exhibit A** attached hereto and made a part hereof by this reference and according to the plat map thereof recorded on MAY 28th 2008 under Reception No. 200811079 in Plat Book N/A at Page N/A of the real property records of the Clerk and Recorder of Eagle County, Colorado; said land and improvements being hereinafter collectively referred to as the "Real Estate". Declarant desires by this Declaration to create a common interest community under the name and style of "Market Street Lofts Condominiums," in which portions of said Real Estate will be designated for separate ownership and use by means of the condominium form of ownership, for residential purposes and in which the remainder of said Real Estate will be designated for common ownership solely by the owners of the separate ownership portions.

1.2 **Submission of Real Estate.** Declarant hereby submits the Real Estate, including all easements, rights-of-way and appurtenances thereto and the buildings and improvements erected thereon, to condominium ownership under and pursuant to the provisions of the Colorado Common Interest Ownership Act, Section §§38-33.3-101, *et seq.* of the Colorado Revised Statutes, as it may be amended from time to time (the "Act") and to this Declaration (the "Declaration"). The common interest community hereby created is hereinafter referred to as the "Condominium Project." Pursuant to the Act, Declarant hereby reserves and declares that all of the Condominium Project shall be subject to the recorded easements, licenses and restrictions listed on **Exhibit B** attached hereto. Declarant also hereby declares that all of the Condominium Project shall be held, occupied, used, leased, mortgaged, sold and conveyed subject to the following terms, easements, reservations, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Condominium Project; that this Declaration shall run with the Condominium Project and shall be binding on all parties having any right, title or interest in the Condominium Project or any part thereof, their heirs, devisees, legal representatives, successors and assigns, and shall inure to the benefit of the Association and each and every Owner.

1.3 **Development Rights Reserved.** Declarant does not reserve any development rights or other special declarant rights, and none of the Condominium Project is subject to development rights or special declarant rights, except as follows:

(a) Declarant reserves the right to convert Parking Condominium Units 27 through 30 to storage areas (as described in more detail in Section 3.11(c) below). Declarant further reserves the right to condominiumize parking spaces owned by Declarant that are not otherwise dedicated as Limited Common Elements appurtenant to specific Condominium Units. This reserved right to condominiumize parking spaces, includes the right to file a supplement to this Declaration and the Map that shall define and describe common obligations and assessments and shall show the locations and dimensions of such condominiumized parking spaces. Declarant further reserves the right to separately lease, sell, convey or transfer all right, title and interest in and to such condominiumized parking spaces, subject to the PUD Control Document, including any applicable administrative review procedure therein, and so long as any lease, sale, conveyance or transfer of a condominiumized parking space is to an owner or tenant of any portion of the real property that is located within Block 10, Willits Town Center, or within a Block that is adjacent to or diagonally contiguous to Block 10, Willits Town Center, as provided in Section 3.5 of the PUD Control Document.

(b) Declarant reserves the right to reallocate the Allocated Interests, including the undivided interest in the Common Elements, percentage of share of the Common Expenses and the votes in the Association during the Period of Declarant Control.

(c) Declarant reserves the right to amend and make technical corrections to this Declaration and the Map (defined below) to reflect actual "as-built" dimensions and/or to better conform and eliminate discrepancies between this Declaration and the Map and the previously recorded easements, licenses and restrictions listed on **Exhibit B** attached hereto.

(d) The reserved rights of Declarant described in sub-sections (a), (b) and (c) of this Section 1.3 may be exercised by Declarant at any time during the five (5) year period which commences upon the recordation of this Declaration.

(e) Declarant has provided in Section 6.2 a period of Declarant control of the Association (as defined below). This period of Declarant control shall extend through the maximum time period allowed for Declarant control under the Act.

ARTICLE 2. DEFINITIONS

When used in this Declaration, the following terms shall have the meanings hereinafter specified. If a term is not defined herein, it shall have the meaning ascribed to it in the Act.

2.1 **Allocated Interests.** "Allocated Interests" means the undivided interest in the Common Elements, the Common Expenses liability, and the votes in the Association allocated to each of the Condominium Units established herein. The Allocated Interests for the Condominium Project are specifically set forth on **Exhibit C** attached hereto and made a part hereof by this reference. These Allocated Interests are subject to change as provided in Article 1 of this Declaration. The total value of the Allocated Interests in the Project is 100%, and the percentage thereof assigned to each Condominium Unit shall be as set forth in Exhibit C of this Declaration. If by error a substantial disparity in size is discovered to exist, the Allocated Interests may be readjusted by the Declarant in its discretion so long as reasonable recognition is given to the method of original determination of Allocated Interests for the Project. Allocated Interests shall be determinative of the proportionate share of each Unit in the proceeds and expenses of administration, the value of such Unit's vote at meetings of the Association, and of such Unit's undivided interest in the Common Elements (which is hereby allocated to each Unit).

All of the Owners and Mortgagees of Units and other persons interested or to become interested in the Project from time to time shall be deemed to have unanimously consented to such amendment or amendments to this Declaration to effectuate the foregoing and, subject to the limitations set forth herein, proportionate reallocation of Allocated Interests of existing Units which Declarant or its successor may determine necessary in conjunction with such amendment or amendments. All such interested persons irrevocably appoint Declarant or its successors as agent and attorney for the purpose of execution of such amendment or amendments to this Declaration and all other documents necessary to effectuate the foregoing.

2.2 **Articles of Incorporation.** "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Market Street Lofts Owners Association, which have been or will be filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.3 **Assessment.** "Assessment" means a Regular Assessment, Special Assessment, or Reimbursement Assessment.

2.4 **Association.** "Association" means the Market Street Lofts Owners Association, a Colorado nonprofit corporation, its successors and assigns.

2.5 **Budget.** "Budget" means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Executive Board pursuant to Section 9.7 of this Declaration.

2.6 **Bylaws.** "Bylaws" means the Bylaws of the Association which have been or will be adopted by the Executive Board of the Association, as the same may be amended from time to time.

2.7 **Common Elements.** "Common Elements" means all portions of the Condominium Project other than the Condominium Units, including the underlying land.

2.8 **Common Expenses.** "Common Expenses" means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

2.9 **Condominium Unit.** "Condominium Unit" means the individual residential or parking air space units described in greater detail in Sections 3.1 through 3.4 of Article 3 hereof. The dimensions of each Condominium Unit are also shown and described on the Map.

2.10 **Condominium Project.** "Condominium Project" means the real property described in Section 1.1 above, together with and including all Condominium Units, General Common Elements and Limited Common Elements, together with all improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

2.11 **Executive Board.** "Executive Board" or "Board" means the Executive Board of the Association.

2.12 **General Common Elements.** "General Common Elements" means all Common Elements except Limited Common Elements.

2.13 **Limited Common Elements.** "Limited Common Elements" means a portion of the Common Elements allocated by the Map and/or by this Declaration for the exclusive use of one or more of the Condominium Units but fewer than all of the Condominium Units.

2.14 **Map.** "Map" means the Condominium Map of Market Street Lofts Condominiums, as recorded on MAY 28th, 2008 in Plat Book N/A at Page N/A *et seq.* under Reception No. 200811080 in the Office of the Clerk and Recorder of Eagle County, Colorado, as said Plat may be supplemented or amended from time to time.

2.15 **Member.** "Member" means each Condominium Unit Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit.

2.16 **Occupant.** "Occupant" means any person who is a tenant in a Condominium Unit pursuant to a lease with the Owner thereof, or any person who is present within the Condominium Project as a family member, guest or invitee of an Owner, an Occupant, or the Association.

2.17 **Owner.** "Owner" means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of record to a Condominium Unit, including sellers under executory contracts of sale and excluding buyers thereunder. The term "Owner" shall be analogous to the term "Unit Owner" as such term is defined in the Act.

2.18 **Parking Condominium Unit** "Parking Condominium Unit" means any one of those Parking Condominium Units located in the below-grade parking garage as identified on the Map. Collectively, these units are referred to herein as Parking Condominium Units.

2.19 **PUD Control Document** "PUD Control Document" means the Amended and Restated Final Development Plan PUD Control Document for Willits Town Center recorded as Document Number 935330 on November 2, 2005 with the Clerk and Recorder of Eagle County, Colorado.

2.20 **Limited Common Element Parking or LCE Parking.** Those parking spaces in the below-grade parking garage that are not designated as any of the sixteen (16) Parking Condominium Units shall be and are

hereby designated as Limited Common Element Parking or LCE Parking. All Residential Condominium Units shall have designated appurtenant LCE Parking spaces, as shown and identified on the Map.

2.21 **Person.** "Person" means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or any combination thereof.

2.22 **Regular Assessment.** "Regular Assessment" means a charge against each Owner and the Owner's Unit for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Executive Board in accordance with Section 9.7 below, and are allocated to the Condominium Units in accordance with the percentage share of common expenses of the Allocated Interests.

2.23 **Reimbursement Assessment.** "Reimbursement Assessment" means a charge against a particular Owner and the Owner's Condominium Unit for purpose of reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant of this Declaration or any amendment hereto, the Articles, Bylaws, or Rules and Regulations, or for purposes set forth in the Declaration, pursuant to Section 6.3 hereof, together with late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Condominium Unit Owner or of such Owner's Occupants.

2.24 **Residential Condominium Unit.** "Residential Condominium Unit" means any one of the Residential Condominium Units located on floors two (2) and three (3) of the Building. Collectively, these units are referred to herein as Residential Condominiums Units. There is a total of forty-four (44) Residential Condominiums in the Condominium Project.

2.25 **Rules and Regulations.** "Rules and Regulations" means such rules and regulations as may be adopted from time to time by the Executive Board, as provided in Section 6.3 of this Declaration, subject to Declarant's reserved rights.

2.26 **Special Assessment.** "Special Assessment" means a charge against each Owner and the Owner's Condominium Unit for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair or replacement of capital improvements within the Condominium Project, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association, as authorized by the Executive Board from time to time as provided herein.

ARTICLE 3.

GENERAL PROVISIONS AND RESTRICTIONS

It is the intention of Declarant to establish and impose a common and general plan for the improvement, development, use and occupancy of the Condominium Project, all in order to enhance the value, desirability, and attractiveness of the Condominium Project and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Condominium Project shall be owned, held, used occupied, improved, altered, maintained, conveyed, leased, encumbered and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions.

3.1 **Division into Residential Units.** The Condominium Project is hereby divided into forty-four (44) Residential Condominium Units, and sixteen (16) Parking Condominium Units, all of which are and shall be known and described as numbered Condominium Units in the Market Street Lofts Condominiums as set forth in Section 3.3 below, each consisting of a separate fee simple estate in a Unit and an appurtenant undivided fee simple interest in the Common Elements. The identification number of each Unit is shown on the Condominium Map. Each Unit Owner shall own an appurtenant undivided interest in the Common Elements as a tenant-in-common with the other Owners, and shall have the non-exclusive right to use and enjoy the General Common Elements. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Elements (including balcony spaces, parking spaces and storage areas) which are designated for the exclusive use of a Unit on the Map or in this Declaration.

3.2 **Inseparability of a Condominium Unit.** Each Condominium Unit and its appurtenant undivided interest in the Common Elements shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Condominium Unit.

3.3 **Description of Condominium Units.** Every contract for sale, deed, lease, security interest and every other legal document or instrument shall legally describe a Condominium Unit utilizing the format set forth as follows:

Condominium Unit [Unit Number], together with its appurtenant Limited Common Element Parking Space No. _____ and Limited Common Element Storage Space No. _____, in Market Street Lofts Condominiums, according to the Condominium Map of Market Street Lofts Condominiums recorded on ~~MM 26th 2008~~ under Reception No. ~~2081080~~ in Plat Book ~~N/A~~ at Page ~~N/A~~ *et seq.* and the Condominium Declaration for Market Street Lofts Condominiums recorded on ~~MM 26th 2008~~, 2008 under Reception No. ~~2081082~~, as amended from time to time, all in the Office of the Clerk and Recorder of Eagle County, Colorado.

Such description shall be legally sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect a Condominium Unit and its appurtenant undivided interest in the Common Elements, and to incorporate all of the rights, interests, obligations, restrictions and burdens appurtenant or incident to ownership of a Condominium Unit as set forth in this Declaration and on the Map. Each such description shall be construed to include a non-exclusive easement over the Common Elements for appropriate ingress and egress to and from each Condominium Unit, and a non-exclusive right to use and enjoy the Common Elements, subject to all applicable provisions of this Declaration.

3.4 **Condominium Unit Boundaries.** The boundaries of each Condominium Unit are shown on the Map. Each Condominium Unit is an air space unit which is bounded by the unfinished interior surfaces of the exterior walls (or the common wall where the Condominium Units adjoin one another), floors, ceilings, windows and window frames, and doors and door frames, and which is separately identified on the Map. Furthermore:

(a) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Condominium Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements;

(b) Any shutters, awnings, window boxes, doorsteps, balconies, balcony light fixtures, windows, window frames, doors and door frames, fireplace components, parking spaces, storage lockers, and all exterior doors and windows or other fixtures designated to serve a single Condominium Unit, but located outside the Condominium Unit's boundaries, are Limited Common Elements allocated exclusively to that Condominium Unit; and

(c) All built-in air handling, ventilation and heating systems including chutes, flues, ducts, wires, conduits, plumbing and all other mechanical systems of the Market Street Lofts Condominiums wherever situated that serve only one Condominium Unit are Limited Common Elements allocated solely to that Condominium Unit and any portions thereof that serve more than one Condominium Unit or any portion of the Common Elements are General Common Elements.

(d) Any real property, spaces or improvements outside the boundaries of any Condominium Unit that are not designated as Limited Common Elements on the Map or in this Declaration shall be General Common Elements, including without limitation the air spaces between the Condominium Units.

(e) Any structural elements, bearing or party walls or columns wherever situated, to the unfinished surfaces thereof, shall be General Common Elements.

3.5 **No Partition or Subdivision of Condominium Units or Common Elements.** Except as provided in this Section or Section 1.3, no Owner may assert any right or bring any action for partition or subdivision with respect to such Owner's Condominium Unit or the Common Elements. By becoming an Owner, each Owner waives any and all rights of subdivision or partition that such Owner may have with respect to such Owner's Condominium Unit and/or the Common Elements. This Section 3.5 shall not, however, limit or restrict the right of the Owners of a Condominium Unit to bring a partition action pursuant to Section 38-28-101, *et seq.*, of the Colorado Revised Statutes requesting the sale of the Condominium Unit and the division of the proceeds among such Owners; provided that no physical division of the Condominium Unit or of the Common Elements shall be permitted as a part of such action and no such action shall affect any other Condominium Unit. Timesharing or interval ownership forms of ownership or use of Units are expressly prohibited.

3.6 **Separate Assessment.** Declarant shall give written notice to the Assessor of Eagle County, Colorado requesting that the Condominium Units be separately assessed and taxed and that the total value of the Common Elements be assessed and taxed proportionately in accordance with the Allocated Interests of such Condominium Units in the Common Elements. After this Declaration has been recorded in the real estate records of Eagle County, Colorado, Declarant shall deliver a copy of this Declaration as recorded to the Assessor of Eagle County, Colorado.

3.7 **Mechanic's Liens.**

(a) If any Owner shall cause or permit any material to be furnished to such Owner's Condominium Unit or any labor or services to be performed therein, no Owner of any other Condominium Unit shall 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, services or materials to such Owner's Condominium Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Elements or any Condominium Unit other than that of such Owner with any mechanic's or materialmen's lien or other lien or encumbrance whatsoever. Notice is hereby given that 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 Condominium Unit for work done or materials furnished to any other Owner's Condominium Unit is hereby expressly denied.

(b) If, because of any act or omission of any Owner, any mechanic's or materialmen's lien or other lien or order for the payment of money shall be filed against any of the Common Elements or against any other Owner's Condominium Unit or against any other Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose or which act or omission forms the basis for such lien or order shall, at such Owner's own cost and expense, cause such lien or order to be canceled or bonded over in an amount and by a surety company reasonably acceptable to the party or parties affected by such lien or order within twenty (20) days after the filing thereof, and further such Owner shall indemnify and save harmless all such parties affected from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees resulting therefrom.

3.8 **Additions, Alterations or Improvements by Condominium Unit Owners.** No additions, alterations, changes or improvements shall be constructed, made, done or permitted to any Condominium Unit by any Owner, Occupant, or employee or agent thereof, without the prior written approval of the Executive Board. Without limiting the generality of the foregoing, said restrictions shall apply to and include (i) alteration or change of any structural elements of a Condominium Unit, including the roof, (ii) painting or other alteration or change of the exterior of a Condominium Unit, including doors, windows and balcony components, (iii) alteration or change of any Common Elements (including Limited Common Elements) appurtenant to the Condominium Units, or (iv) addition, alteration, change or removal of any landscaping. The foregoing restrictions shall not apply to nonstructural additions, alterations, changes or improvements to the interior of a Condominium Unit, that are not visible from outside the Condominium Unit, and that are in compliance with all applicable laws, ordinances, regulations and codes. Except for alterations to Limited Common Elements which have received the prior written approval of the Executive Board of the Association, no Owner or Occupant shall have any right to alter, change or improve in any way the Common Elements or any part thereof, said Common Elements being the exclusive responsibility and jurisdiction of the Association.

3.9 **Maintenance of the Condominium Project.** All property within the Condominium Project, including without limitation all Condominium Units, General Common Elements and Limited Common Elements shall be kept and maintained in a safe, clean and attractive condition and in good order, condition and repair.

(a) **Association Maintenance Responsibilities.** The Association shall be responsible for maintaining, repairing, improving, restoring and replacing the Common Elements, including the Limited Common Elements. Such obligations shall include without limitation the painting, staining or other resurfacing of the exterior surfaces of all building façade elements, walls, exterior doors, windows, decks and balconies (including the snowmelt system installed in conjunction with certain of the balconies) of the Condominium Units, the maintenance, repair, improvement, restoration or replacement of all structural elements and roofs, common lighting and utilities, water features, snowplowing, and landscaping, irrigation and general upkeep of all Common Element driveway, walkway or landscaped areas. The Association, through its Executive Board, shall have the exclusive right and authority to make any changes, alterations, improvements or additions to the Common Elements, including the Limited Common Elements, and no individual Condominium Unit Owner, nor any Occupant shall have any right to do any of such things without the express prior written consent of the Executive Board. Each Condominium Unit is subject to the right of access for the benefit of the Association and its Executive Board, agents, employees and contractors, for purposes of accomplishing the maintenance and repair tasks and obligations described herein during normal business hours upon reasonable advance notice.

The cost of maintaining, decorating, repairing and replacing all Common Elements shall be assessed to all Owners according to their Allocated Interests in the Association; unless, however, the need for maintenance, repair or replacement is due to the act or neglect of an Owner or his agent, guest, invitee, family member or pet, for which such Owner shall be wholly responsible.

The cost of maintaining, decorating, repairing and replacing the Limited Common Elements (including, but not limited to, exterior doors, windows, window screens, decks and balconies) shall be born solely by the Owner of the Unit associated with such Limited Common elements; unless, however, the need for maintenance, repair or replacement is due to the act or neglect of an Owner or his agent, guest, invitee, family member or pet, for which such Owner shall be wholly responsible. The Association shall be reimbursed for the cost of such work on such Limited Common Elements. The Owner shall reimburse the Association within thirty (30) days of billing or the Association shall have the right to recover its expenses in the same manner as established for the collection of assessments as provided in this Declaration. Except as otherwise provided herein or in the Condominium Bylaws, any damage caused to a Unit or its contents by the maintenance or by repair activities of the Association with respect to the Common Elements or Limited Common Elements shall be repaired at the expense of the Association.

If the need for such maintenance or repair results from the willful or negligent act of or from damage or destruction caused by a Condominium Unit Owner or an Occupant, the Executive Board shall have the right to perform such maintenance or repair and to levy and collect a Reimbursement Assessment upon the Condominium Unit Owner and the Owner's Condominium Unit for the costs and expenses incurred by the Association in connection therewith.

(b) **Owner Maintenance Responsibilities.** Each Owner shall be responsible for maintaining, repairing and improving as necessary all interior elements and features of the Owner's Condominium Unit and all Limited Common Elements appurtenant thereto, including interior non-supporting walls, improvements, fixtures, equipment, appliances and appurtenances thereto, and the exterior lighting that services and is controlled by the Owner of a particular Unit (including the replacement of light bulbs). The exterior light fixtures may not be altered without the written consent of the Association. Each Owner shall also be responsible for keeping the Limited Common Elements associated with their Unit, including exterior doors, windows, window screens, decks, balconies, parking spaces and storage areas, as well as any Parking Condominium Unit owned by the Owner, if any, in a clean and sightly condition, free of all garbage and debris. In addition, each Owner shall be responsible for any damage to other Condominium Units or Common Elements resulting from the Owner's failure to perform or negligent performance of the Owner's maintenance and repair responsibilities as set forth herein. Each Owner shall

perform the Owner's maintenance and repair responsibilities in such manner as shall not unreasonably disturb or interfere with other Condominium Unit Owners or Occupants.

The appearance of the decks or balconies shall at all times be subject to the approval of the Association. In the event that the cleaning and decoration of the Limited Common Elements by the responsible Owner does not conform to reasonable aesthetic and maintenance standards established by the Association, the Association will have the right to take such action as may be necessary to bring such Limited Common Element up to required standards and to charge all costs incurred to the Owner responsible for cleaning, repair and/or maintenance.

If an Owner fails to perform any such maintenance or repair obligations within ten (10) days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to enter upon the Condominium Unit of the Owner to perform such obligations on the Owner's behalf and to levy and collect a Reimbursement Assessment upon the Owner and the Owner's Condominium Unit for the costs and expenses incurred by the Association in connection therewith. Each Condominium Unit is subject to an easement for the benefit of the Association and its Executive Board, agents, employees and contractors, for purposes of accomplishing the maintenance and repair rights described herein.

(c) **Standard of Care.** The Association and the individual Condominium Unit Owners shall each use a reasonable standard of care in performing their respective maintenance, repair and upkeep responsibilities so that the entire Condominium Project will reflect a pride of ownership. All repairs and replacements within the Condominium Project shall be substantially similar to the original construction and craftsmanship and shall be of first-class quality.

(d) **Emergency Maintenance and Repair.** Notwithstanding any other provisions of this Section 3.9, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of persons or property within the Condominium Project, the Executive Board, and its duly appointed agent, shall have the authority (without any notice being required) to take whatever remedial action and to undertake such maintenance, repairs and improvements as may be necessary anywhere in the Condominium Project to protect persons and property.

3.10 **Compliance with Laws.** No Owner or Occupant shall do any act or cause or permit anything to be done or kept in or upon its Condominium Unit, or any Common Elements which would be in violation of any federal, state, city or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any rule or regulation promulgated by the Association, or of any provision of this Declaration, or which would result in the increase of, or cancellation of, insurance maintained by the Association.

3.11 **Residential Condominium Uses and Parking Condominium Uses.**

(a) **Residential Condominium Unit Uses.** Each Residential Condominium Unit shall be occupied and used only for residential purposes permitted by the Town of Basalt. No business, professional or other non-residential or commercial use shall be made of any Residential Condominium Unit, or conducted in any Residential Condominium Unit, excepting in-home businesses or occupations that are in compliance with the Town Code of the Town of Basalt and which do not involve employees other than Owners, the solicitation or invitation of the general public, or the servicing of customers, and which activities are conducted entirely within the Residential Condominium Unit and do not cause any additional traffic or parking within the Condominium Project or otherwise create a nuisance for neighboring Condominium Units or the Condominium Project. Use of Residential Condominium Units under a time-share or interval ownership form of ownership is expressly prohibited.

(b) **Parking Condominium Unit Uses.** Parking Condominium Units shall be owned only by Residential Condominium Unit Owners. As more fully described in Section 3.19 below, Parking Condominium Units shall be used solely for parking licensed, operational automobiles and motorcycles owned and used by Parking Condominium Unit Owners and Occupants, and for no other purposes. An Owner of a Parking Condominium Unit must also be an Owner of a Residential Condominium Unit. In this

regard, Parking Condominium Unit Owners and Occupants are expressly prohibited from selling, assigning, transferring, leasing, subleasing or otherwise granting parking privileges to third parties who are not Owners or tenants of Owners occupying a Residential Condominium Unit. Trucks, vans and recreational vehicles exceeding 6'6" in height or 18 feet in length are expressly prohibited.

(c) **Convertibility of Parking Spaces to Storage Areas.** Declarant reserves the right to convert Parking Condominium Units numbered 27 through and including 30, as shown on the Map, to enclosed storage areas for individual Residential Unit Owners for as long as Declarant owns any such Parking Condominium Units. The design elements (e.g. demising wall construction and configuration) of the Parking Condominium Units to be converted to storage areas shall be subject to the applicable building code provisions of the Town of Basalt.

3.12 Annoying Light, Sound or Odor.

All exterior lighting installed or maintained on any Condominium Unit shall be placed so that the light source is screened or shielded from any other Condominium Unit, and shall require the prior written approval of the Executive Board in each instance. No light shall be emitted from any part of the Condominium Project (including any Condominium Unit) which is unreasonably bright or causes unreasonable glare. Without limiting the generality of the foregoing, no spotlights, floodlights or other high-intensity lights shall be permitted within the Condominium Project without the prior written approval of the Executive Board. Without limiting the foregoing, all lighting must comply with applicable rules and regulations of the Town of Basalt.

No sound shall be emitted from any part of the Condominium Project (including any Condominium Unit) which is unreasonably loud or annoying, or emitted at unreasonable hours, and no odor shall be emitted from any part of the Condominium Project (including any Condominium Unit) which is noxious or unreasonably offensive. Again without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used within the Condominium Project except with the prior written approval of the Executive Board.

The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any violation of this Section 3.12 including the reasonableness of any light, sound or odor.

3.13 **Noxious or Offensive Activities; Nuisances.** No noxious or offensive activity shall occur or be allowed at any time within the Condominium Project, nor shall anything be done or placed therein which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to Owners, Occupants or the Association, or which interferes with the peaceful enjoyment or possession and proper use of the Condominium Project, or any part thereof, by Condominium Unit Owners or Occupants. The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any nuisance or unreasonable annoyance under this Section 3.13. Each Condominium Unit Owner or Occupant, shall comply with any rules and regulations and the requirements of all health authorities and other governmental authorities having jurisdiction over the Condominium Project.

3.14 **No Hazardous or Unsafe Activities.** No activity shall be conducted on, and no improvement shall be constructed on, any property within the Condominium Project which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no explosives, gasoline, or other volatile and/or incendiary materials or devices or any materials deemed hazardous substances under applicable environmental laws, rules, or regulations shall ever be kept, stored, permitted to remain or be released on or in any Condominium Unit or elsewhere within the Condominium Project.

3.15 **Outside Burning; Fire Hazards.** No exterior fires shall be lighted or permitted within the Condominium Project except in a contained barbecue unit while attended and in use for cooking purposes. No Condominium Unit Owner or Occupant shall cause or permit any condition upon or within a Condominium Unit which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for other Condominium Unit Owners.

3.16 **No Firearms.** The discharge of firearms upon or within any part of the Condominium Project, including the Condominium Units, is expressly prohibited.

3.17 **Un sightliness; Sporting Equipment; Clothes Drying.** Balconies, General and Limited Common Elements (excepting enclosed storage areas), shall not be used for storage of personal property of any kind, and nothing shall be placed on or in windows or doors or otherwise on the exterior of Residential Condominium Units or Common Elements, including signs of any type or nature, which create an unsightly appearance. Sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, etc.) and children's toys must be stored completely inside designated storage areas shown on the Map or within the Condominium Units and shall not be allowed to remain outside except when in actual use. Parking Condominium Units shall be used only for parking one (1) street licensed motor vehicle, and shall not be used for storage of any kind, except and unless such Parking Condominium Unit has been duly approved for and converted from parking uses to enclosed storage uses pursuant to Section 3.11(c) above. No laundry or wash shall be dried or hung outside anywhere within the Condominium Project.

3.18 **Garbage and Trash.** With the exception of dumpsters or other trash receptacles provided by the Association on Common Elements, no refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain anywhere within the Condominium Project. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition, and except when being carried to and from the trash chute or trash room, they shall be kept completely within a Condominium Unit. The disposal of furniture or other large items shall not be placed in the trash compactor, nor shall any unsafe or hazardous materials be placed therein.

3.19 **Vehicle Parking, Storage, Operation and Repair.**

(a) Each parking space and each Parking Condominium Unit shall be used only for parking one (1) motorized vehicle. All motorized vehicles that belong to Owners or Occupants shall be parked entirely within the designated parking spaces. The dimensions and locations of the Condominium Project's parking spaces and Parking Condominium Units are located within the lower level parking area described and shown on the Map. The three (3) Americans with Disability Act (ADA) compliant, handicap-accessible LCE parking spaces designated on the Map as LCE P-39, LCE P-40 and LCE-61 shall remain as such, and be appurtenant to their respective Condominium Units unless a change in their designation is approved by the Town in accordance with the PUD Control Document. If any ADA-compliant Condominium Unit is conveyed to a non-ADA Owner in compliance with applicable requirements, such Owner shall have full use of the LCE parking space designated for such Condominium Unit. All motorized vehicles within the Condominium Project shall be maintained in good repair, operational and be currently licensed and registered in accordance with local laws and regulations.

(b) Except as provided in subsection (a) above, no boats, trailers, buses, motor homes, campers (on or off supporting vehicles), snowmobiles, recreational vehicles, trucks, industrial or commercial vehicles (both cabs or trailers), or any other vehicles shall be parked or stored anywhere within the Condominium Project and no vehicles of any kind shall be maintained, repaired, repainted, serviced or rebuilt anywhere within the Condominium Project.

(c) Notwithstanding the foregoing, vehicles may be temporarily parked within the Condominium Project for loading, delivery or emergency purposes, but only for the time required to accomplish such purpose, and as necessary on a daily basis for authorized construction, maintenance, repair or other service activities within the Condominium Project.

(d) In the event that the Executive Board shall determine that a vehicle is in violation of the provisions of this Section 3.19, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), and if the offending vehicle is not removed within 48 hours thereafter, or if the offending activity continues, the Executive Board shall have the right to remove and store the offending vehicle, or cause the vehicle to be removed and stored, at the sole expense of the owner of the vehicle, all without liability on the part of the Executive Board. If the

vehicle is not claimed within sixty (60) days after its removal, the Executive Board may dispose of the vehicle in any manner the Executive Board deems best.

(e) Snowmobiles, motorcycles, trail bikes, mini bikes, dirt bikes, all-terrain vehicles, and similar vehicles shall not be used or operated (but may be transported on trailers) within the Condominium Project, except that motorcycles properly licensed for operation on public roads may be operated within the Condominium Project subject to such Rules and Regulations as the Executive Board may adopt from time to time. Notwithstanding the express limitation of storing one (1) motorized vehicle per Limited Common Element parking space or Parking Condominium Unit set forth in sub-section (a) above, the Executive Board may, in its discretion, adopt parking Rules and Regulations that permit more than one (1) motorized vehicle to be parked within a Limited Common Element parking space or Parking Condominium Unit (such as, one (1) compact car and one (1) motorcycle, or two (2) motorcycles parked in one (1) space), so long as such multiple motor vehicles, when parked, fit entirely within the dimensions of a Limited Common Element parking space or Parking Condominium Unit space, as show and described on the Map.

(f) Unenclosed parking spaces and Parking Condominium Units and the Common Elements, airspace and structural elements surrounding such spaces shall not be used for the storage of any items other than motorized vehicles. Items prohibited from being temporarily placed or stored on, in or near such parking spaces and Parking Condominium Units include but are not limited to construction materials, firewood, storage bins or containers, and other personal property. The structural elements surrounding such parking spaces and Parking Condominium Units shall not be altered with shelves, hooks or racks or other similar items to facilitate hanging or suspending or otherwise organizing personal property, including, but not limited to, storage containers, bicycles and sports equipment.

3.20 **Animals.** Except as specifically permitted below or by the Rules and Regulations, no animals, reptiles, primates, fish, fowl or insects of any kind shall be kept, raised, bred, maintained or boarded for commercial purposes within or upon any part of the Condominium.

No more than two (2) common household pets (two dogs or two cats or one dog and one cat) may be kept in a Residential Condominium Unit, so long as these animals do not cause an unreasonable amount of noise or odor, or do not otherwise become a nuisance to other Condominium Unit Owners or Occupants. All household pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws. A household pet shall be leashed when on or about the Common Elements and shall be accompanied by the pet's owner or the owner's representative at all times.

The Owner of a Residential Condominium Unit where a household pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet(s), and for any cleanup within the Condominium necessitated by such pet(s). The Association may, without liability to the owner thereof, remove or cause to be removed any animal from the Condominium which it determines to be in violation of the restrictions imposed by this Section. The Association shall have the right to require that any pets be registered with it and may adopt such additional reasonable rules and regulations with respect to animals as it may deem proper. In the event of any violation of this Section, the Executive Board may assess fines for such violation in accordance with this Section and in accordance with duly adopted rules and regulations.

3.21 **Antennae, Satellite Dishes, Etc.** Each Condominium Unit has been pre-wired for connection to a cable television service to be provided by an independent service provider. Except for the foregoing, no radio, television or other antennae of any kind or nature, and no device for the transmission or reception of audio, video, microwave or other signals, including without limitation satellite dishes or receivers, shall be erected, attached, placed or permitted to remain on any Common Elements or Limited Common Elements without the prior written approval of the Executive Board as to design, location and method of installation, and then must be adequately fenced or screened in a manner approved by the Executive Board.

3.22 **Outdoor Furniture and Grills.** No unsightly condition shall be maintained upon any balconies and only furniture and equipment consistent with ordinary balcony or patio use shall be permitted to remain there during seasons when such areas are reasonably in use, and such furniture or equipment shall be stored

in a neat and slightly manner during seasons when they are not reasonably in use. Only grills using propane or natural gas are allowed, charcoal grills are strictly forbidden.

3.23 **No Mining or Drilling.** No property within the Condominium Project shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

3.24 **Excavations.** No excavation or other earth disturbance shall be performed or permitted within the Condominium Project except with the prior written approval of the Executive Board.

3.25 **Underground Utility Lines.** Except as to special street lighting or other above-ground facilities which may be expressly required by the Town of Basalt, no above-ground utility lines or facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Condominium Project, and all utility lines and facilities (including but not limited to water, sewer, gas, electricity, telephone, and cable television) shall be buried underground.

3.26 **Windows, Screens and Doors.** The windows, screens and doors in the Project which serve an individual Unit, are restricted in use to the Owner of the Unit to which such windows, screens and doors are appurtenant. The exterior appearance of windows, screens and doors may not be altered without the prior written consent of the Executive Board.

3.27 **Association Landscaping.** All landscaping within the General Common Elements of the Condominium Project shall be the responsibility of the Association, and no Owner or Occupant shall perform any landscaping activities within the Condominium Project (including without limitation the planting, grooming or removal of grass, trees, bushes or other vegetation, or the planting or tending of gardens) without the express prior written approval of the Executive Board. Any plants maintained by an Owner or Occupant shall be confined to the interior of the Owner's Unit or the adjoining balcony as described in Section 3.28 below.

3.28 **Balconies.** Owners may have container flowers or flower boxes on balcony railings (not windows), however, such plant containers must be placed within the interior of the balcony railing. The appearance of the balconies shall at all times be subject to the approval of the Association. In the event that the cleaning and decoration of such Limited Common Elements by the responsible Owner does not conform to reasonable aesthetic and maintenance standards established by the Association, the Association will have the right to take such action as may be necessary to bring such Limited Common Elements up to required standards and to charge all costs incurred to the Owner responsible for cleaning, repair, and maintenance.

3.29 **Signs and Advertising.** No sign, poster, billboard or advertising device of any kind shall be allowed or displayed anywhere within the Condominium Project without the prior written approval of the Executive Board. Without limiting the foregoing, all signs must comply with applicable rules and regulations of the Town of Basalt and the PUD Control Document.

3.30 **Leases.** All Leases of Condominium Units shall be in writing and shall contain the following terms and conditions:

- (a) The Lease for a Residential Condominium Unit and/or Parking Condominium Unit must cover the entire Condominium Unit (*i.e.*, no Leases of bedrooms or other parts of a Condominium Unit shall be permitted). So long as an Owner resides in a Condominium Unit, the Owner shall have the right to enter into rental arrangements with roommates or housemates. In the event an Owner does not reside in the Condominium Unit, the Owner shall have the right to lease the Condominium Unit to third party Occupants, so long as the number of individual Occupants does not exceed the number of bedrooms in the Condominium Unit, and all Occupants are signatories to the Lease. Notwithstanding the foregoing, the leasing of designated Resident Occupied ("RO") Condominium Units by an Owner is prohibited, except with the prior approval of the Town and subject to the Town's conditions of approval, although such RO Owner may enter into rental arrangements with roommates or housemates. A parking space or

Condominium Unit owned by an Owner shall not be leased or rented to an individual who is not an existing Owner or Occupant of a Residential Condominium Unit.

(b) All Leases shall provide (i) that the terms of the Lease and the tenant's (Occupant's) use of the Condominium Unit and its appurtenances shall be subject in all respects to the provisions of this Declaration, and the Articles and Bylaws of the Association, and any Rules and Regulations adopted by the Association, (ii) that the Occupant has received and reviewed copies of said documents, and (iii) that any failure by the Occupant to comply with any of the aforesaid documents, in any respect, shall be a default by Occupant under the Lease and a default by Occupant and Owner under said documents which may be enforced against Occupant and/or Owner by the Executive Board.

(c) Each Owner who leases a Condominium Unit shall be responsible for assuring compliance by the Occupant with all of the provisions of this Declaration, the Articles and Bylaws, and any rules and regulations, and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant.

(d) Each Lease shall expressly provide that the Association (via the Executive Board) shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the documents listed in subsection (b) above, which notice shall specify a period of time (at least 5 days) in which the Occupant may cure the violation. If the violation continues uncured, or if it is repeated within the 3-month period following the date of the first notice, the Lease shall provide that the Owner gives to the Association an irrevocable power of attorney to act on the Owner's behalf to give such statutory notices to the Occupant and to take such other actions as may be necessary or appropriate to terminate the Lease and to evict the Occupant from the premises. If a Lease does not contain such provisions, the Owner hereby irrevocably appoints the Association as its attorney-in-fact to act on its behalf as herein set forth.

(e) Declarant shall have the right to rent or lease any Residential Condominium Unit(s) or Parking Condominium Unit(s) Declarant owns (i) without regard to the number of Units in the Project being rented or leased from time to time, (ii) without providing notice to the Executive Board, receiving the approval of the Executive Board, or delivering a copy of any such lease(s) to the Executive Board, (iii) with such durations and terms as Declarant may elect, and (iv) for so long as Declarant shall own such Residential Condominium Unit(s) and Parking Condominium Unit(s). The Declarant shall have the right to lease any Parking Condominium Unit owned by Declarant to its commercial tenants.

3.31 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or Occupant of a Condominium Unit, any member of the Executive Board, and any authorized representative thereof, shall have the right to enter upon and inspect any Condominium Unit, except for any Condominium Unit that is in fact occupied or in active use (which shall require the permission of the occupant except in the case of emergency, as provided in Section 4.3 below), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such individuals shall not be deemed guilty of trespass by reason of such entry. For purposes of this Section, an Owner or Occupant shall be deemed to be occupying and actively using the Condominium Unit if the Owner or Occupant is physically present in the Basalt area, and not out of town or residing elsewhere.

3.32 Health, Safety and Welfare, Rules and Regulations. In the event any uses, occupancies, activities, and facilities within the Condominium Project are deemed by the Executive Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Condominium Owners or Occupants, the Executive Board may adopt reasonable Rules and Regulations of general application in order to appropriately restrict and regulate such uses, occupancies, activities or facilities within the Condominium Project. Such Rules and Regulations shall be consistent with the purposes and provisions of this Declaration.

3.33 Variances. The Executive Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article 3, if the Executive Board determines, in its discretion, (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete, and (b) that the

activity permitted under the variance, in the judgment of the Executive Board, will not have any material adverse effect on the Owners and Occupants of the Condominium Project, and is consistent with the high quality of living intended to be promoted hereby throughout the Condominium Project. When an Owner applies for a variance, the Executive Board must give at least ten (10) days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Condominium Units in the Condominium Project, at the current addresses for such Owners reflected in the Association files. The applying Owner must provide the Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them.

No variance shall conflict with ordinances or regulations of the Town of Basalt. If a variance from the Town of Basalt laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such Town of Basalt variance before submitting a variance application to the Executive Board.

ARTICLE 4. EASEMENTS

4.1 **Blanket Association Utility Easement Over Common Elements.** There is hereby created, granted and reserved to the Association, its agents, employees and assigns a perpetual, non-exclusive blanket easement over, across, upon and under the Common Elements for construction, installation, operation, maintenance, repair, removal and replacement of utilities and utility lines, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Condominium Project or any part thereof, including but not limited to water, sewer, gas, telephone, electricity, cable television and other master television and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes. The Association or other person or entity exercising such utility easement rights shall be obligated to restore, reseed, replant and/or re-landscape the surface of any disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility work.

4.2 **Association Administrative Easement Over Common Elements.** There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under the Common Elements and a right to use the Common Elements for purposes of enabling the Association to perform its various responsibilities and to exercise its various rights under this Declaration.

4.3 **Association Easement in Condominium Units for Maintenance, Repair and Emergencies.** There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon all Condominium Units as necessary for the performance of the Association's rights and responsibilities under this Declaration and for the making of emergency repairs or reconstruction to the building, the Condominium Units, and/or the Common Elements. For routine maintenance and non-emergency repairs, entry to a Condominium Unit shall be made only on a regular business day during regular business hours, after giving at least one day's notice in writing to the Owner. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time provided that a reasonable effort is made, under the circumstances, to give notice of such intended entry. The Executive Board is hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Condominium Unit in case of an emergency, if no other reasonable means of entry is available. The Owner of the Condominium Unit shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry. These costs can be levied, assessed and collected by the Executive Board as a Reimbursement Assessment pursuant to the provisions of this Declaration.

4.4 **Encroachment Easements.** Each Owner has an easement upon an adjoining Condominium Unit or Common Element for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting or movement of the building, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachments occur due to the willful misconduct of

an Owner. In the event a structure is partially or totally destroyed, and then repaired or rebuilt in substantially the same manner as originally constructed, the Owners agree that minor encroachments upon an abutting Condominium Unit or Common Element shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

4.5 **Blanket Emergency Services Easement.** There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Condominium Project and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all properties and areas within the Condominium Project, for use in the lawful performance of their duties.

4.6 **Easements Deemed Created.** All conveyances of Condominium Units hereafter made, shall be deemed and construed to grant and reserve all of the easements referred to in this Article 4 and elsewhere in this Declaration, even though no specific reference to such easements appears in the conveyancing instruments.

4.7 **Recorded Easements, Licenses and Restrictions.** In addition to the easements described in this Article 4 and elsewhere in this Declaration, the recorded easements, licenses and restrictions appurtenant to or included in the Condominium Project are set forth on **Exhibit B** attached hereto and made a part hereof by this reference.

ARTICLE 5.

COMMON ELEMENTS

5.1 **Use and Enjoyment of Common Elements.** Except as otherwise provided in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Elements in common with all other Owners (a) for all purposes for which such Common Elements were established, and (b) as required for purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Condominium Unit owned by the Owner or Common Elements available for the Owner's use. This right to use and enjoy the Common Elements shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and shall be appurtenant to each Condominium Unit, subject at all times to the provisions of this Declaration, the Articles and Bylaws, and any Rules and Regulations adopted by the Executive Board from time to time. No Owner or Occupant shall place any structure or improvement whatsoever upon the Common Elements, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to or use of all parts of the Common Elements (excepting Limited Common Elements) by all Owners and by the Association. No Owner or Occupant shall use the General Common Elements for commercial or residential related uses related to a Unit without prior written approval of the Executive Board.

5.2 **Association May Regulate Use of Common Elements.** Subject to the applicable requirements under the Act, the Association, acting through the Executive Board, shall have the right and authority to regulate the use of the Common Elements by the promulgation, enforcement and interpretation from time to time of such Rules and Regulations relating thereto as the Association considers necessary or appropriate for the protection and preservation of the Common Elements and the enhancement of the use and enjoyment thereof by the Owners and Occupants. The Association, acting through the Executive Board, shall also have the right and authority to lease or license the Common Elements to Owners or non-owner third parties for the exclusive use of said non-owner third party lessee or licensee. In no event shall such leasing or licensing of the Common Elements materially adversely affect a Condominium Unit or the Limited Common Elements appurtenant thereto.

5.3 **Owner Liability for Owner or Occupant Damage to Common Elements.** Each Owner shall be liable to the Association for any damage to Common Elements or for any expense, loss or liability suffered or incurred by the Association in connection with the Common Elements arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration, or the rules and regulations relating to the Common Elements. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a

Reimbursement Assessment against a Condominium Unit Owner to recover the costs, expenses, damage, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations by the Owner or the Owner's Occupant.

5.4 **Damage or Destruction to Common Elements.** In the event of damage to or destruction of the Common Elements, including improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of Section 7.2 below. Repair, reconstruction, or replacement of Common Elements shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of Common Elements or for any other use deemed appropriate by the Executive Board.

ARTICLE 6. ASSOCIATION

6.1 **Association; General Powers.** The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Condominium Project. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Elements, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as may be provided in this Declaration, the Articles and the Bylaws. The Association shall have all of the powers, authority and duties as may be necessary or appropriate for the management of the business and affairs of the Condominium Project, including without limitation all of the powers, authority and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act. The Association shall have the power to assign its right to future income, including the right to receive Common Expense assessments, but only upon the affirmative vote of the Owners of Condominium Units holding at least 51 percent of the votes in the Association. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

6.2 **Association Executive Board.** The affairs of the Association shall be managed by an Executive Board. Pursuant to and subject to Section 38-33.3-303(5)(a) and (6) of the Act, and as more particularly set forth and described in the Bylaws of the Association, Declarant has by these presents provided for a period of Declarant control of the Association, during which period Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Executive Board. This period of Declarant control shall extend through the maximum period of time allowed for Declarant control under the Act. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation or the Bylaws, except that there shall never be less than one member. A quorum shall be deemed present throughout any meeting of the Executive Board if persons entitled to cast at least fifty-one (51) percent of the votes on the Executive Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Executive Board or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Without limiting the generality of the foregoing, no rule or regulation may be validly adopted during an executive session. Agendas for meetings of the Executive Board shall be made reasonably available for examination by all Members of the Association or their representatives.

The Executive Board shall have all of the powers, authority and duties granted or delegated to it by the Act, this Declaration, the Articles or Bylaws. Except as provided in the Act, this Declaration, the Articles or Bylaws, the Executive Board may act in all instances on behalf of the Association.

The Executive Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Condominium Project, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

The Executive Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. No member of the Executive Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

6.3 **Rules and Regulations.** The Association may adopt, amend, repeal, and enforce such Rules and Regulations as the Executive Board may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration, the operation of the Association, and the use and enjoyment of the Common Elements (including Limited Common Elements). Any such Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant shall comply with such Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or of any provision of this Declaration, the Articles, or the Bylaws.

6.4 **Membership in Association.** There shall be one Membership in the Association for each Condominium Unit within the Condominium Project. The person or persons who constitute the Owner of a Condominium Unit shall automatically be the holder of the Membership appurtenant to that Condominium Unit, and shall collectively be the "Member" of the Association with respect to that Condominium Unit, and the Membership appurtenant to that Condominium Unit shall automatically pass with fee simple title to the Condominium Unit. Membership in the Association shall not be assignable separate and apart from fee simple title to a Condominium Unit, and may not otherwise be separated from ownership of a Condominium Unit.

6.5 **Voting Rights of Members.** Each Condominium Unit in the Condominium Project shall be entitled to the number of votes provided in that Unit's Allocated Interests. Occupants (i.e., non-Owners) of Condominium Units and Parking Condominium Unit Owners shall not have voting rights. If title to a Condominium Unit is owned by more than one (1) person, such persons shall collectively vote their interest in a unanimous vote. If only one of the multiple owners of a Condominium Unit is present at an Association meeting, such owner is entitled to cast the vote allocated to that Condominium Unit. If more than one of the multiple owners is present, the vote allocated to that Condominium Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any of the multiple owners casts the vote allocated to that Condominium Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Condominium Unit. In the event of a protest being made by one or more multiple owners, and a majority of the multiple owners of the Condominium Unit cannot agree on how to cast their vote, any vote cast for that Condominium Unit shall be null and void with regard to the issue being voted upon. Such multiple owners and their Condominium Unit shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.

A quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at least 51 percent of the votes in the Association are present, in person or by proxy, at the beginning of the meeting.

Provided a quorum of Members entitled to vote is present in person or by proxy, the affirmative vote of a majority of the Members so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Declaration, the Articles, or the Bylaws.

The vote allocated to a Condominium Unit may be cast pursuant to a proxy duly executed by a Condominium Unit Owner. If a Condominium Unit is owned by more than one person, each owner of the Condominium Unit may vote or register protest to the casting of a vote by the other owners of the Condominium Unit through a duly executed proxy. A Condominium Unit Owner may not revoke a proxy given pursuant to this

Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

The Condominium Unit Owners, by a vote of sixty-seven (67) percent of all Members present and entitled to vote at any meeting of the Condominium Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause.

ARTICLE 7. **INSURANCE**

7.1 **Insurance Requirements.** The Association shall obtain, maintain and keep in full force and effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

(a) **Casualty Insurance.** Property insurance on the Common Elements and on any property owned by the Association. The insurance must include the Condominium Units but not the finished interior surfaces of the walls, floors and ceilings of the Condominium Units. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at a reasonable cost, coverage for vandalism and malicious mischief. Such insurance shall be for the full insurable replacement cost of the Condominium Units and other insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

(b) **Liability Insurance.** Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons. Such liability insurance shall, to the extent reasonably obtainable, (a) have limits of not less than Three Million Dollars (\$3,000,000.00) per person and Three Million Dollars (\$3,000,000.00) per occurrence; (b) insure the Executive Board, the Association and its officers, and their respective employees, agents and all persons acting as agents; (c) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements; (d) cover claims of one or more insured parties against other insured parties; and (e) be written on an occurrence basis.

(c) **Worker's Compensation.** A Worker's Compensation policy, if necessary, to meet the requirements of law.

(d) **Directors and Officers Liability Insurance.** The Association may, in its discretion, carry directors and officers liability insurance in such amount as the Executive Board may deem appropriate.

(e) **Other Insurance.** Such other insurance in such amounts as the Executive Board shall determine, from time to time, to be appropriate to protect the Association or the Condominium Unit Owners, or as may be required by the Act.

(f) **General Provisions Respecting Insurance.** Insurance policies carried pursuant to Sections 7.1(a) and 7.1(b) above shall provide that (i) each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any person claiming by, through, or under such Owner or any other director, agent or employee of the foregoing; (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer

that has issued an insurance policy for the insurance described in Sections 7.1(a) and 7.1(b) above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Condominium Unit Owner or holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Any loss covered by the property insurance policy described in Section 7.1(a) above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a security interest. The Association shall hold any insurance proceeds in trust for the Association, Condominium Unit Owners, and lien holders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Condominium Unit Owners, and lien holders are not entitled to receive payments of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely restored or the Condominium Project is terminated.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. In the event more than one Condominium Unit is damaged by a loss, the Association in its reasonable discretion may assess each Condominium Unit Owner a pro rata share of any deductible paid by the Association.

Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient in light of the current values of Common Elements and in light of the possible or potential liabilities of the Association and other insured parties.

In no event shall insurance coverage obtained or maintained by the Association obviate the need for Condominium Unit Owners and Occupants to obtain insurance for their own benefit to cover risks which include but are not limited to losses to (i) any property included within the Condominium Units and private storage areas which was initially installed in accordance with the Condominium Project's original plans and specifications, or any additions or replacements thereto; or (ii) any property within a Condominium Unit, such as fixtures, additions and interior non-structural partitions or walls ; finishes, coatings and coverings of walls, floors and ceilings; permanently installed appliances such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping .

(g) **Non-liability of Association or Executive Board.** Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Executive Board member shall be liable to any Condominium Unit Owner, Occupant, mortgagee or other person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Condominium Unit Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Condominium Unit Owner or Occupant may desire.

(h) **Premiums.** Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances, or Common Elements, by a Condominium Unit Owner or Occupant, may at the Executive Board's election, be assessed against that particular Condominium Unit Owner and his Condominium Unit as a Reimbursement Assessment.

(i) **Insurance Claims.** The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Executive Board has full and complete

power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Association.

(j) **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Condominium Unit Owners, the Occupants or lien holders as their interests may appear.

(k) **Other Insurance to be Carried by Condominium Unit Owners.** Insurance coverage on the improvements, furnishings and other items of personal property belonging to a Condominium Unit Owner or the Occupants, and public liability insurance coverage upon each Condominium Unit, and any Limited Common Elements designated for that Condominium Unit shall be the responsibility of the respective Owner or Occupant of the Condominium Unit. Upon the written request of the Association, an Owner or Occupant shall provide the Association with a certificate of insurance or similar proof of insurance.

7.2 **Damage to Condominium Project.** Any portion of the Condominium Project for which insurance is required under Section 38-33.3-313 of the Act that is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Condominium Project is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) 67 percent of the Condominium Unit Owners, including owners of every Condominium Unit that will not be rebuilt, vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense. If the entire Condominium Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged property to a condition compatible with the remainder of the Condominium Project, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Condominium Units, and Limited Common Elements that are not rebuilt must be distributed to the Condominium Unit Owners of those properties, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all Condominium Unit Owners, or lien holders as their interests may appear in proportion to the Common Elements interests of the Condominium Units.

Subject to the provisions contained in the preceding paragraphs of this Section 7.2, in the event of damage to or destruction of all or a portion of the Common Elements due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Reimbursement Assessment against the Condominium Unit Owner or group of Condominium Unit Owners responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Executive Board, but not sooner than sixty (60) days after written notice thereof. The Assessment provided for herein shall be a debt of each Condominium Unit Owner assessed and a lien on his Condominium Unit, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged property is not repaired or replaced, the insurance proceeds attributable to the damaged property must be used to restore the damaged property to a condition compatible with the remainder of the Condominium Project. No distributions of insurance proceeds shall be made unless made jointly payable to the Condominium Unit Owners and first mortgagees of their respective Condominium Units, if any.

ARTICLE 8.

LIMITED LIABILITY

Neither the Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Association shall be liable to any Owner or Occupant or to any other person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association and the Executive Board shall not be liable to any Owner or Occupant or other person for

any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice.

ARTICLE 9. **ASSESSMENTS**

9.1 **Assessment Obligation.** Declarant, for each Condominium Unit, shall be deemed to covenant and agree, and each Condominium Unit Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Condominium Unit against which each such Assessment is charged. The obligation for such payments by each Condominium Unit Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Condominium Unit Owner is liable for Assessments made against such Owner's Condominium Unit during his period of ownership of the Condominium Unit. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each person who was an Owner of such Condominium Unit at the time when the Assessment became due. Upon the transfer of title to a Condominium Unit, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

9.2 **Statutory Lien.** The Association has a statutory lien pursuant to §38-33.3-316 of the Act on the Condominium Unit of an Owner for all Assessments levied against such Condominium Unit or fines imposed against such Condominium Unit's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Executive Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within 6 years after the full amount of Assessments becomes due.

9.3 **Lien Superior to Homestead and Other Exemptions.** An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

9.4 **Priority of Lien.** An Assessment Lien is prior to all other liens and encumbrances on a Condominium Unit except as follows:

- (a) Liens and encumbrances recorded before the recordation of this Declaration;
- (b) A security interest on the Condominium Unit which has priority over all other security interests on the Condominium Unit and which was recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to Section 9.7 below) which would have become due, in the absence of any acceleration, during the 6 months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article 9 of an action or a non-judicial foreclosure either to enforce or to extinguish the lien;
- (c) Liens for real estate taxes and other governmental assessments or charges against the Condominium Unit; and

(d) As may otherwise be set forth in the Act. The priority of mechanics' and materialmen's liens is not affected by the Act.

This Article 9 does not prohibit an action or suit to recover sums for which this Article 9 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Condominium Unit shall not affect the lien for an Assessment.

9.5 **Perfection of Lien.** The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Condominium Unit as a Reimbursement Assessment.

9.6 **Regular Assessments.**

(a) A Regular Assessment shall be made annually against each Condominium Unit, based upon an annual Budget prepared by the Executive Board, for purposes of paying:

- (i) the annual costs of operating and administering the Association and all other Common Expenses,
- (ii) reasonable reserves for contingencies, replacements, and other proper purposes, and
- (iii) such other matters as may be reasonably determined by the Executive Board to be the subject of a Regular Assessment;

(b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Condominium Unit in the Condominium Project. The costs comprising the Regular Assessment, as set forth above, shall not be allocated to the Condominium Units in any manner other than in accordance with the Allocated Interests. By way of illustration, but not limiting the generality of the foregoing, the costs of maintaining and operating elevators, garage doors, common hallways within a particular building, and snowmelt shall not be allocated to any Unit or group of Units. Rather, these costs are Common Expenses that, unless part of a Special or Reimbursement Assessment, shall part of the Regular Assessments and allocated to the Condominium Units in accordance with the Allocated Interests. Any Common Expense associated with the maintenance, repair, improvement or replacement of a Limited Common Element appurtenant to only one individual Condominium Unit may be assessed against the Condominium Unit for which the Limited Common Element is designated as a Reimbursement Assessment.

(c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Condominium Unit is conveyed by Declarant to a person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly, semi-annual or annual basis, as the Executive Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual or annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a quarterly or semi-annual or annual system by the Executive Board, Regular Assessments shall be due and payable on the first day of each calendar month. Any Condominium Unit Owner acquiring a Condominium Unit between installment due dates shall pay a pro rata share of the immediately preceding installment.

(d) The Executive Board shall fix the amount of the Regular Assessment, using the budget procedure described below, at least thirty (30) days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Executive Board timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release

any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Executive Board levies the Regular Assessment and provides notice thereof.

(e) The Executive Board shall also mail to each Owner at least ten (10) days prior to the due date thereof a written notice of the amount of the next monthly (or quarterly or semi annual or annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to subparagraph (d) above. Failure of the Executive Board to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Executive Board in fact provides such notice.

(f) In accordance with § 38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's budget.

(g) For the purposes of calculating the Regular Assessment that any Owner may be required to pay to the Association upon purchase of a Unit from the Declarant, said Regular Assessment shall be calculated based on an estimated budget, not yet adopted, prepared for the Association assuming full operation.

9.7 **Association Budget.** Prior to the first day of September of each year (or no less than 120 days prior to the commencement of the fiscal year of the Association if the Association has a fiscal year different than the calendar year), and annually thereafter, the Executive Board shall prepare or cause to be prepared a Budget for the next fiscal year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. Within thirty (30) days after 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 Condominium Unit Owners and shall set a date for a meeting of the Condominium Unit Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting sixty-seven (67) percent of all Condominium Unit Owners reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Condominium Unit Owners shall be continued until such time as the Condominium Unit Owners ratify a subsequent Budget proposed by the Executive Board.

9.8 **Special Assessments.** In addition to the Regular Assessments and Reimbursement Assessments authorized in this Article 9, the Executive Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance, or replacement of capital improvements (including related fixtures and personal property) to or upon or serving the Condominium Project, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association. Except in the event of an emergency, where no membership vote shall be required, the Executive Board shall not levy a Special Assessment without the approval of the Condominium Unit Owners in the Condominium Project as provided below.

Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Owners no less than thirty (30) or more than fifty (50) days before the meeting. At the meeting, the presence of Owners in person or by proxy that are entitled to cast sixty (60) percent of the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirements, and the required quorum at this second meeting shall be only thirty (30) percent of the votes in the Association. No such second meeting shall be held more than sixty (60) days following the date of the first meeting.

Provided a quorum of Owners entitled to vote is present in person or by proxy, in accordance with the quorum requirements set forth in the preceding paragraph, then the affirmative vote of a majority of the Owners so present shall constitute approval of the proposed Special Assessment.

For purposes of this Section 9.8, the term "emergency" shall mean any circumstances or set of circumstances which pose an imminent threat of loss, damage or injury, actual or threatened, to persons or property. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Condominium Unit in the Condominium Project, and shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than thirty (30) days after the giving of such notice.

9.9 Reimbursement Assessments. In addition to the Regular and Special Assessments authorized hereunder, the Executive Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles and Bylaws, or any Rules and Regulations, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Executive Board to an individual Condominium Unit for expenses associated with the maintenance, repair, improvement or replacement of a Limited Common Element appurtenant to only that individual Condominium Unit for which the Limited Common Element is designated. Reimbursement Assessments may also be made by the Executive Board for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. The Executive Board shall not levy a Reimbursement Assessment for expenses that are Common Expenses and are components of Regular Assessments allocated in accordance with the Allocated Interests as provided in Section 9.6 above. By way of illustration, but not limiting the generality of the foregoing, the costs of maintaining and operating elevators, garage doors, common hallways within a particular building, and snowmelt shall not be allocated to any Unit or group of Units as a Reimbursement Assessment. Rather, these costs are Common Expenses that, unless part of a Special Assessments or associated with the maintenance, repair, improvement or replacement of a Limited Common Element appurtenant to only one Condominium Unit, shall part of the Regular Assessments and allocated to the Condominium Units in accordance with the Allocated Interests. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, the Articles, Bylaws, or the Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

9.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Executive Board from time to time, which shall not be less than twelve (12) percent nor more than twenty one (21) percent per year, and the Executive Board may also assess a late charge (and/or a bad check charge) thereon. The Executive Board may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Executive Board may but shall not be required to record a Notice of Delinquent Assessment or charge against any Condominium Unit as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Executive Board, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Condominium Unit.

The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Condominium Unit at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Condominium Unit in the discretion of the Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any Common Elements or by abandonment of the Condominium Unit against which the Assessments are made.

In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Condominium Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Regular Assessments.

9.11 **Statement of Unpaid Assessments.** The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Condominium Unit, whether delinquent or not. The statement shall be furnished within 14 days after receipt of the request and is binding on the Association, the Executive Board, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Condominium Unit for unpaid Assessments which were due as of the date of the request.

ARTICLE 10.

EMINENT DOMAIN

10.1 **Definition of Taking.** The term "taking", as used in this Article 10, shall mean condemnation by eminent domain or sale under threat of condemnation.

10.2 **Representation in Condemnation Proceedings of Common Elements.** In the event of a threatened taking of all or any portion of the Common Elements, the Condominium Unit Owners hereby appoint the Association through such persons as the Executive Board may designate to represent the Association and all of the Condominium Unit Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Association shall constitute sufficient notice to all Condominium Unit Owners, and service of process on each individual Condominium Unit Owner shall not be necessary.

10.3 **Award for Common Elements.** Any awards received by the Association on account of the taking of Common Elements shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Condominium Unit Owners as their interests may appear. The rights of a Condominium Unit Owner and the mortgagee of a Condominium Unit as to any such distribution shall be governed by the provisions of the mortgage encumbering the Condominium Unit.

10.4 **Taking of Condominium Units.** If a Condominium Unit is acquired by eminent domain or part of a Condominium Unit is acquired by eminent domain leaving the Condominium Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Condominium Unit Owner for the acquired Condominium Unit and its Allocated Interests whether or not any Common Elements were acquired. Upon acquisition, unless the court decree or sale agreement (as such is referred to in Section 10.1) otherwise provides, that Condominium Unit's Allocated Interests are automatically reallocated to the remaining Condominium Units (as appropriate) in proportion to the respective Allocated Interests of those Condominium Units before the taking. Any remnant of a Condominium Unit remaining after part of a Condominium Unit is taken is thereafter a Common Element. Otherwise, if part of a Condominium Unit is acquired by eminent domain, the award must compensate the Condominium Unit Owner for the reduction in value of the Condominium Unit and its interest in the Common Elements whether or not any Common Elements were acquired. Upon acquisition, unless the decree or sale agreement (as such is referred to in Section 10.1) otherwise provides:

(a) That Condominium Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Condominium Unit; and

(b) The portion of Allocated Interests divested from the partially acquired Condominium Unit is automatically reallocated to that Condominium Unit and to the remaining Condominium Units (as appropriate) in proportion to the respective interests of those Condominium Units before the taking, with the partially acquired Condominium Unit participating in the reallocation on the basis of its reduced Allocated Interests.

10.5 **Miscellaneous.** The court decree shall be recorded in Eagle County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

ARTICLE 11.

GENERAL PROVISIONS

11.1 **Duration of Declaration.** The term of this Declaration shall be perpetual.

11.2 **Termination of Condominium Project.** The Condominium Project may be terminated only by the agreement of Condominium Unit Owners holding at least sixty-seven percent (67%) of the votes in the Association. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

11.3 **Amendment of Declaration and Map.** In addition to Declarant's reserved right to amend and supplement the Map and Declaration set forth in Section 1.3 above, this Declaration and the Map may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration may be amended by the Declarant in certain defined circumstances, including for purposes of correcting clerical, typographical, or technical errors. The Act also provides that the Declaration may be amended by the Association in certain defined circumstances. Otherwise, this Declaration (including the Map) may be amended only by the vote or agreement of Condominium Unit Owners holding at least sixty-seven (67) percent of the votes in the Association. Furthermore, Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted Declarant or Association amendments), no amendment may (i) increase the number of Condominium Units, or (ii) change the boundaries of any Condominium Unit or the Allocated Interests of a Condominium Unit in the absence of a vote or agreement of Condominium Unit Owners holding at least sixty seven percent (67%) of the votes in the Association including sixty seven percent (67%) of the votes held by Condominium Units not owned by Declarant. No consent of any mortgage or trust deed holder shall be required to accomplish any such amendments.

An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Map," and shall be duly executed by the President and Secretary of the Association and recorded in the Office of the Clerk and Recorder of Eagle County. All amendments to this Declaration shall be indexed in the Grantee's index in the names of the Condominium Project and the Association, and in the Grantor's index in the name of each person executing the amendment.

11.4 **Compliance; Enforcement.** Every Owner and Occupant of a Condominium Unit in the Condominium Project shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Declaration, the Articles, Bylaws and Rules and Regulations, and all approvals granted by the Executive Board, as the same or any of them may be amended from time to time. In addition to any other rights or remedies that may be provided to any person under the terms and provisions of this Declaration, the Association through its Executive Board, and every Condominium Unit Owner (except an Owner that is delinquent in the payment of Assessments hereunder), shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Declaration, the Articles, Bylaws, Rules and Regulations, and approvals granted by the Executive Board. Such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, orders to stop work, orders to remove improvements constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

The Executive Board shall have the further right (a) to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters, (b) to levy and collect a Reimbursement Assessment against any Owner, and/or (c) to enter upon any Condominium Unit within the Condominium Project, after giving the Condominium Unit Owner or Occupant at least five (5) days written notice of the nature of the violation (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation.

In any action brought under this Section 11.4, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith. Failure by any party entitled to do so to exercise in a particular instance any of the rights available to it under this Section 11.4 shall in no event be deemed a waiver of the right to do so in any other instance.

Provided always, that no Owner shall have the right to bring an enforcement action against another Owner or Occupant for a breach by that Owner or Occupant of any of such matters, or against the Association for a breach by the Association of any of such matters or for a failure by the Association to enforce compliance with such matters by others, until the aggrieved Owner has given the offending Owner or Occupant and the Association at least thirty (30) days prior written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem during that 30 day period.

And further provided, that notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration, the Bylaws, the Articles of Incorporation, or the Rules and Regulations, or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

11.5 Notice. Each Condominium Unit Owner, and each first mortgagee if it so elects, shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the first-class U.S. Mail, certified and return receipt requested, with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of a Condominium Unit Owner that has not provided such an address, to the Condominium Unit of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

11.6 No Dedication to Public Use. Nothing contained in this Declaration shall be deemed to be or to constitute a dedication of all or any part of the Condominium Project to the public or to any public use.

11.7 Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Condominium Project, and to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Declaration are determined to be inconsistent with the Act, the Act shall control.

11.8 Conflict With Map. In the event of any conflict or inconsistency between the provisions of this Declaration and the Map, the provisions of said Map shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Map.

11.9 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Failure of the Association to bring enforcement action to correct any violation of this Declaration shall not constitute a waiver of or estop the Association from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.

11.10 Captions. Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

11.11 **Singular Includes Plural.** Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

11.12 **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

11.13 **Costs and Attorneys' Fees.** In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the substantially prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

11.14 **Governing Law; Jurisdiction.** The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for Eagle County, Colorado, and by acceptance of a deed to a Condominium Unit each Condominium Unit Owner voluntarily submits to the jurisdiction of such court.

11.15 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Declarant shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable but which in Declarant's reasonable opinion would be considered not to be unconscionable.

IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of the day and year first above written.

DECLARANT:

WILLITS TOWN CENTER PARTNERS LLC, a
Colorado limited liability company

By: JFA Management LLC, an Illinois limited
liability company, its Manager

By: 
One of its Managers

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Jeffrey S. Arnold, one of the Managers of JFA Management LLC, the Manager of Willits Town Center Partners LLC, a Colorado limited liability company, personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of May 2008.

(NOTARY SEAL)



Lori F Chacos
Notary

CONSENT OF MORTGAGEE

Subject to the conditions set forth below, LaSalle Bank National Association, ("Bank"), the holder of a Deed of Trust recorded against the Total Parcel in the Office of the Eagle County Clerk and Recorder on September 8, 2006 as Reception No. 200624526, as amended by a Modification Agreement recorded against the Total Parcel in the Office of the Eagle County Clerk and Recorder on February 16, 2007 as Reception No. 200704213 (collectively together with all future modifications, amendments, increases, extensions and refinancings of the foregoing, the "Deed of Trust"), securing an Amended and Restated Promissory Note dated February 16, 2007 (the "Note"), in the principal amount of \$56,465,000, hereby consents to the execution and recording of the attached Condominium Declaration for Market Street Lofts Condominiums (the "Declaration"), and agrees that the Deed of Trust is subject thereto; provided, however, that such consent and agreement by the Bank are subject to the condition that by the execution and recording of the Declaration, the Declarant agrees to the following (it being understood that all capitalized terms used and not otherwise defined below shall have the same meanings as in the Declaration):

1. The lien and encumbrance of the Deed of Trust is hereby spread to encumber (i) the Condominium Units and Common Elements created under the Declaration, and (ii) the rights of the Declarant under the Declaration.

2. Notwithstanding any provisions of the Declaration, no additional notices or requests to the Declarant or the Association shall be required of the Bank's status as a mortgagee, or of the Bank's request to receive all notices and other communications to which mortgagees are entitled under the terms of the Declaration. The address of the Bank for purposes of notices and other communications under the Declaration is LaSalle Bank National Association, 135 South LaSalle Street, Chicago, Illinois 60603, Attention: Commercial Real Estate Division. In addition to any requirements for notice contained in the Declaration, so long as the Deed of Trust is outstanding as a lien on any one or more Condominium Units, copies of all notices and other communications which are given or sent by the Declarant, the Association or any Condominium Unit Owner under the Declaration shall be simultaneously sent to the Bank as holder of the Deed of Trust.

3. As between the Declarant and the Bank, so long as the Deed of Trust is outstanding as a lien on any one or more Condominium Units, the Declaration shall not be deemed to supersede or take precedence over any provisions of the Deed of Trust.

4. Notwithstanding any provisions of the Declaration, so long as the Deed of Trust is outstanding as a lien on any one or more Condominium Units, no modification or amendment to the Declaration, and no termination, vacation, revocation or abandonment of the Declaration, shall be effective without the prior written consent of the Bank.

5. Notwithstanding any provisions of the Declaration, including, without limitation, Section 9.4 thereof, any lien created by any provision of the Declaration, including, without limitation, Section 9.1 of the Declaration, shall not be superior to or take precedence over the Deed of Trust, but instead shall be subject and subordinate to the Deed of Trust, and any lien created by any provision of the Declaration, including, without limitation, Section 9.1 of the Declaration, shall be automatically cut-off, terminated and defeated by any sale enforcing the Deed of Trust, and by a deed other conveyance in lieu of foreclosure of the Deed of Trust.

In witness whereof, the Bank has caused this Consent of Mortgagee to be signed by its duly authorized officer on its behalf in CHICAGO, IL on this 23 day of MAY, 2008.

LaSalle Bank National Association

By: [Signature]
Name: JOSH GRILL
Title: FVP

STATE OF Illinois)
COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY, that JOSH GRILL, the FVP of LaSalle Bank
National Association, and personally known to me to be the same person whose name is
subscribed to the foregoing instrument as such FVP, appeared before me this
day in person and acknowledged that he/she signed and delivered the said instrument as his/her
own free and voluntary act and as the free and voluntary act of said bank, for the uses and
purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23 day of MAY, 2008.

[Signature: Preeti Saini]
Notary

20215242



EXHIBIT "A"

REAL ESTATE

Lot B, Block 10, Amended Final Plat of Willits Town Center, Filing No. 10 situated in a portion of Tracts 46 and 47, in Section 2, Township 8 South, Range 87, West of the Sixth Principal Meridian, Town of Basalt, County of Eagle, State of Colorado, Recorded on May 28th, 2008 as Reception No. 200811079 of the Eagle County, Colorado records.

EXHIBIT "B"

RECORDED EASEMENTS, LICENSES AND RESTRICTIONS

1. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted and right of way for ditches or canals constructed by the authority of the United States as reserved in United States Patents recorded August 10, 1898 in Book 48 at Page 224 and November 16, 1907 in Book 48 at Page 287.

2. Easements, rights of way and all matters as disclosed on the Final Plat and Zone District Map of Willits Town Center Planned Unit Development Plat (a resubdivision of Parcels 2A , 2B, 2C and 2D of Sopris Meadows PUD) recorded July 25, 2001 as Reception No. 763043 and Plat of Willits Town Center, Filing No. 5, recorded June 1, 2005 as Reception No. 917692.

3. Terms, conditions, provisions and obligations as set forth in Amended and Restated Final Development Plan PUD Control Document recorded November 2, 2005 as Reception No. 935330.

4. Terms, conditions, provisions, obligations, easements, restrictions, assessments and all matters as set forth in the Declaration of Covenants, Conditions and Restrictions for Willits Town Center recorded July 25, 2001 as Reception No. 763045 and First Amendment to Willits Town Center Declaration of Covenants, Conditions and Restrictions, (Mixed-Use PUD) recorded November 2, 2005 as Reception No. 935332, and Second Amendment to Willits Town Center Declaration of Covenants, Conditions and Restrictions (Mixed-Use PUD) recorded June 25, 2006 as Reception No. 200618039, deleting therefrom any restrictions indicating preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin.

5. Terms, conditions, provisions, obligations, easements, restrictions and assessments and all matters as set forth in the Declaration of Restrictive Covenant recorded July 25, 2001 as Reception No. 763051 and Amendment to Declaration of Restriction Covenant recorded November 10, 2004 as Reception No. 897437, deleting therefrom any restrictions indicating preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin.

6. Those terms, conditions, provisions, obligations, easements, restrictions, assessments and all matters as set forth in Declaration of Restrictive Covenants for Willits Town Center recorded April 22, 2004 as Reception No. 874605, and Amended Declaration of Restrictive Covenants recorded May 5, 2004 as Reception No. 876336 and Correction to Amended Declaration of Restrictive Covenants recorded August 4, 2004 as Reception No. 886634, deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

7. Terms, conditions, provisions and obligations as set forth in Willits Town Center Line Extension Agreement for Filing No. 5, recorded October 27, 2005 as Reception No. 934760.

8. Easements, rights of way and all matters disclosed in Amended Final Plat of Willits Town Center Filing No. 10, Block 10, Willits Town Center P.U.D. recorded MAY 28th, 2008, 2008 as Reception No. 200811079.

9. Terms, conditions, provisions, obligations, easements, restrictions, assessments and all matters set forth in Declaration of Reciprocal Covenants, Conditions, Restrictions and Easements for Market Street Lofts recorded MAY 28th, 2008 as Reception No. 200811081.

10. Easements, rights of way and all matters as disclosed on Condominium Map of the Market Street Lofts Condominiums recorded MAY 28TH, 2008 as Reception No. 2008 11080.

11. Terms, conditions, provisions, obligations, easements, restrictions, assessments and all matters as set forth in the Condominium Declaration for the Market Street Lofts Condominiums recorded MAY 28TH, 2008 as Reception No. 2008 11082.

EXHIBIT C

ALLOCATED INTERESTS

MARKET STREET LOFTS			
Unit Number	Unit Type	Square footage	Percentage of Interest
200		1,059	2.150%
202		1,031	2.093%
204		1,033	2.097%
208		1,024	2.079%
208		1,040	2.111%
210		1,031	2.093%
212	Barrier-Free	753	1.529%
214		950	1.929%
216		1,007	2.044%
218		1,030	2.091%
220		1,027	2.085%
222		1,028	2.087%
224		1,023	2.077%
226		1,726	3.504%
228	Barrier-Free	1,513	3.071%
230		1,111	2.255%
232		1,098	2.229%
234		1,097	2.227%
236		1,103	2.239%
238		1,384	2.810%
240		538	1.092%
242		788	1.600%
300		1,063	2.158%
302		1,028	2.087%
304		1,044	2.119%
306		1,024	2.079%
308		1,057	2.146%
310		946	1.920%
312		658	1.336%
314		948	1.924%
316		1,008	2.046%
318		1,030	2.091%
320		1,027	2.085%
322		1,029	2.089%
324		1,023	2.077%
326		1,725	3.502%
328	Barrier-Free	1,523	3.092%
330		1,141	2.316%
332		1,106	2.245%
334		1,107	2.247%
336		1,107	2.247%
338		1,399	2.840%
340		541	1.098%
342		793	1.610%

EXHIBIT C

ALLOCATED INTERESTS

MARKET STREET LOFTS			
Unit Number	Unit Type	Square footage	Percentage of Interest
P-1	Parking - standard	171	0.347%
P-13	Parking - standard	171	0.347%
P-18	Parking - standard	171	0.347%
P-27	Parking - standard	171	0.347%
P-28	Parking - standard	171	0.347%
P-29	Parking - standard	171	0.347%
P-30	Parking - standard	171	0.347%
P-31	Parking - standard	171	0.347%
P-32	Parking - standard	149	0.302%
P-33	Parking - small	149	0.302%
P-34	Parking - small	171	0.347%
P-44	Parking - standard	171	0.347%
P-52	Parking - standard	171	0.347%
P-55	Parking - motorcycle	95	0.193%
P-56	Parking - motorcycle	95	0.193%
P-60	Parking - standard	171	0.347%

100.000%

ref to: Pitkin County Title