

DECLARATION  
FOR LINES III CONDOMINIUMS, A PLANNED COMMUNITY

TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS.....	1
1.1 Declarant.....	1
1.2 Real Property.....	1
1.3 Residential Building.....	1
1.4 Commercial Building.....	1
1.5 Project.....	1
1.6 Map.....	1
1.7 Individual Space.....	1
1.8 Exclusive Common Elements.....	2
1.9 General Common Elements.....	2
1.10 Unit.....	2
1.11 Owner.....	2
1.12 Guest.....	3
1.13 Mortgagee.....	3
1.14 Lienholder.....	3
1.15 Residential Association.....	3
1.16 Commercial Association.....	3
1.17 Reserved Parcel.....	3
II. DECLARATION AND EFFECT THEREOF.....	3
2.1 Declaration.....	3
2.2 Division Into Units.....	4
2.3 Association Ownership of Common Elements.....	4
2.4 Description of Unit.....	4
2.5 Duration of Ownership.....	5
2.6 Inseparability.....	5
2.7 Ad Valorem Taxation.....	5
2.8 Mechanics' Lien.....	5
III. VARIOUS RIGHTS AND EASEMENTS.....	6
3.1 Owner's Rights in General Common Elements.....	6
3.2 Owner's Rights in Individual Space.....	6
3.3 Residential or Commercial Association Rights.....	6
3.4 Owner's Easements for Access, Support and Utilities.....	6
3.5 Easements for Encroachment.....	6
3.6 Easements in Individual Space for Repair, Maintenance and Emergencies	7
3.7 Negligence or Willful Misconduct.....	7

3.8	Easements Deemed Appurtenant.....	7
3.9	Right to Combine Units.....	7
3.10	Partition of Individual Spaces Prohibited.....	8
IV.	CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION...	8
4.1	Association Management.....	8
4.2	Common Element Maintenance.....	8
4.3	Assessment Function.....	8
4.4	Labor and Services.....	9
4.5	Real and Personal Property of Association.....	9
4.6	Construction on Association Property.....	9
4.7	Association Right to Utilize, Lease or License General Common Elements	9
4.8	Association Right to Borrow Money.....	10
4.9	Rules and Regulations.....	10
4.10	Implied Rights.....	11
4.11	Residential and Commercial Association; General Common Elements	11
V.	THE ASSOCIATION.....	11
5.1	General Purposes and Powers.....	11
5.2	Membership.....	11
5.3	Member Action.....	11
5.4	Voting of Owners.....	12
5.5	Manager.....	12
5.6	Notices.....	12
5.7	Record Date.....	12
5.8	Quorums.....	13
5.9	Statement of Authority.....	13
VI.	ASSESSMENTS.....	13
6.1	Assessments.....	13
6.2	Determination of Budget and Assessments.....	13
6.3	Apportionment of Assessments.....	14
6.4	Time for Payments.....	14
6.5	Lien for Assessments and Other Amounts.....	14
6.6	Estoppel Certificate.....	15
6.7	Liability of Owners, Purchasers, and Encumbrancers.....	15
VII.	RESERVED PARCEL	
7.1	Declarants' Reservation.....	15
7.2	Site Specific Location.....	15
7.3	Maintenance.....	16
7.4	Defeasance or Termination of Reserved Parcel.....	16

7.5	Exemption From Unit Liens .....	16
7.6	Commercial Owners' Association .....	16
VIII.	USE AND OTHER RESTRICTIONS.....	17
8.1	Individual Space Restrictions.....	17
8.2	Common Elements Restrictions.....	17
8.3	No Imperiling of Insurance.....	17
8.4	No Violation of Law.....	18
8.5	No Noxious, Offensive, Hazardous or Annoying Activities.....	18
8.6	No Unsightliness.....	18
8.7	Restriction on Signs.....	18
8.8	Antennas.....	18
8.9	Maintenance of Individual Space.....	18
8.10	No Violation of Rules .....	19
8.11	Owner Caused Damage .....	19
8.12	Animals .....	19
IX.	INSURANCE.....	19
9.1	Insurance Requirements Generally.....	19
9.2	Casualty Insurance.....	20
9.3	Public Liability and Property Damage Insurance.....	20
9.4	Worker's Compensation and Employer's Liability Insurance.....	21
9.5	Insurance by Owners.....	21
9.6	Receipt and Application of Insurance Proceeds.....	21
9.7	Other Insurance by Association.....	21
9.8	Owner-Increased Premiums.....	21
9.9	Declarants Insure Reserved Parcel .....	22
X.	DESTRUCTION, CONDEMNATION, OBSOLESCENCE, AND RESTORATION OR SALE OF THE BUILDING.....	22
10.1	Certain Definitions.....	22
10.2	Determination by the Members.....	23
10.3	Restoration of a Building.....	23
10.4	Sale of a Building.....	23
10.5	Authority of Association(s) to Restore or Sell.....	24
10.6	Payment of Proceeds.....	24
10.7	Supplementary Assessments for Restoration.....	24
10.8	Receipt and Application of Condemnation Funds.....	24
10.9	Reorganization in the Event of Condemnation.....	24
10.10	Voting.....	25
XI.	COMMONLY OWNED UNITS.....	25

11.1	Commonly Owned Units.....	25
11.2	Votes and Assessments for Commonly Owned Units.....	25
11.3	Sale or Lease of Commonly Owned Units.....	25
XII.	MISCELLANEOUS.....	25
12.1	Duration of Declaration.....	25
12.2	Amendment and Termination.....	25
12.3	Effect of Provisions of Declaration.....	26
12.4	Enforcement and Remedies.....	26
12.5	Protection of Encumbrancer.....	26
12.6	Limited Liability.....	27
12.7	Successors and Assigns.....	27
12.8	Severability.....	27
12.9	Captions .....	27
12.10	No Waiver.....	27
12.11	Further Assurances.....	27
12.12	Word Usage.....	28
	Signatures and Notary Clauses .....	28

1/21/05  
recordable  
final

**DECLARATION**  
**FOR**  
**LINES III CONDOMINIUMS, A PLANNED COMMUNITY**

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by  
CARL GEORGE LINES and TONG LUU.

I. **DEFINITIONS.**

1.1 **Declarants.** "Declarants" mean Carl George Lines and Tong Luu.

1.2 **Real Property.** "Real Property" means the real property situated in the Town of Carbondale, County of Garfield, State of Colorado, described as Lot 13, Crystal Village PUD, Filing No. 3.

1.3 **Residential Building.** "Residential Building" means the constructed building improvement situated on the Real Property and containing six (6) Residential Units, as shown and described on the Map and any supplements thereto which may be filed in the Garfield County records.

1.4 **Commercial Building.** "Commercial Building" means the unconstructed, but approved, building improvements which may or may not be constructed within a 4200 square foot building pad, or footprint, reserved out of the General Common Elements on the real property.

1.5 **Project.** "Project" means the Real Property and the Residential and Commercial Buildings and General and Exclusive Common Elements and improvements now or hereafter located on the Real Property. The Project is a Condominium type of Common Interest Community formed under the provisions of C.R.S. 38-33.3-101, et. seq.

1.6 **Map.** "Map" means the Map for the Lines III Condominiums filed in the records in the office of the Clerk and Recorder of Garfield County, Colorado, as Reception No. \_\_\_\_\_.

1.7 **Individual Space.** "Individual Space" means an individual air space unit as herein more particularly defined. An Individual Space consists of enclosed rooms occupying part of the Building. Each Individual Space is shown on the Map and is identified thereon with a number. The boundaries of each Individual Space are shown on the Map by heavy lines along the walls which mark the perimeter boundaries of the Individual Space. The exact boundaries of an Individual Space are the interior surfaces of such walls which mark the perimeter boundaries and, where found along such walls, the interior surfaces of built-in fireplaces and of windows and doors in their closed position, and the Individual Space includes both the portions of the Building so described as the air space so encompassed. Any Exclusive Common Elements, as hereinafter

defined, which may be within an Individual Space shall not be part of the Individual Space or owned by the Owner of the Unit, as hereinafter defined, of which the Individual Space is a part.

1.8 Exclusive Common Elements. "Exclusive Common Elements" means all common elements within, or adjacent to, either the Residential Building or the Commercial Building ("Buildings"), and shall include any part of the Buildings or any facilities or fixtures or equipment which may be within an Individual Space, which are necessary or convenient to the support, existence, use, occupancy, operation, maintenance, repair or safety of the Buildings or any part thereof, or any other Individual Space in one of the Buildings. The Exclusive Common Elements shall include accessory buildings or structures housing amenities, equipment, trash depositories, utilities, facilities or storage for one of the Buildings. The Residential Building and the Commercial Building shall each have their own Exclusive Common Elements. Exclusive Common Elements shall never include parking lots or parking facilities, curbs, gutters, outside walkways or driveways, trees, shrubs, lawns, parks, play areas and similar facilities. Without limiting the generality of the foregoing, the following shall constitute Exclusive Common Elements appurtenant to each of the Buildings on the Real Property: (a) all foundations, columns, girders, beams and support of either of the Buildings; (b) all exterior walls, the main bearing walls, the main or bearing sub-flooring and the roofs, of or within either of the Buildings; all entrances, exists, stairs, stairways, landings, elevators and fire escapes not within an Individual Space; (c) all utility, service and maintenance areas, space fixtures, equipment, apparatus, installations and facilities for purposes of power, light, gas telephone, television, internet access and use, hot water, cold water, heating, refrigeration, incineration, trash disposal, or similar utilities, including furnaces, tanks, boilers, pumps, motors, fans, compressors, vents, ducts, flues, wires, pipes, conduits, and other similar fixtures, structures, apparatus or equipment, provided they do not exist solely to serve an Individual Space in which they may be located.

1.9 General Common Elements. "General Common Elements" means all of the remaining portions of the Real Property which are not part of the Individual Spaces or the Exclusive Common Elements, including all utility main lines crossing the Real Property, to any point where such utility lines enter one of the Buildings.

1.10 Unit. "Unit" means the physical portion of the Residential or Commercial Condominiums (Individual Spaces) designed for separate ownership by this Declaration and the Condominium Map. Unit ownership shall include an undivided percentage ownership interest in the Exclusive Common Elements serving a particular Unit and in the General Common Elements, which serve all Units.

1.11 Owner. "Owner" means the person or persons or entity or entities, including Declarant, who own fee simple title to a Unit. The term Owner shall not include the owner or owners of any lesser estate or interest.

1.12 Guest. "Guest" means any customer, agent, employee, tenant, guest or invitee of any Owner; and any person or entity who has acquired any title or interest, less than fee simple, in a Unit by, through or under an Owner, including lessee, licensee or mortgagee and any customer, agent, employee, tenant, guest or invitee of any such person or entity.

1.13 Mortgagee. "Mortgagee" means any person or entity who is a mortgagee under a recorded mortgage or a beneficiary under a recorded deed of trust or the holder of a similar recorded security instrument encumbering a Unit. "First Mortgage" means the first and most senior of all recorded mortgages, deeds of trust and similar instruments encumbering a Unit, and "First Mortgagee" means the Mortgagee under such mortgage, deed of trust or other instrument.

1.14 Lien Holder. "Lien Holder" means any person or entity who holds a legally perfected security instrument, other than a mortgage or deed of trust encumbering a Unit.

1.15 Residential Association. "Residential Association" means the Lines III Condominiums Residential Owners Association, a Colorado non-profit corporation, whose members shall be the Owners of Units within the Residential Building of Lines III Condominiums, A Planned Community, its successors and assigns.

1.16 Commercial Association. "Commercial Association" means the Lines III Condominiums Commercial Owners Association, a Colorado non-profit corporation, which shall be established if the Commercial Building is constructed and a certificate of occupancy is issued therefor, whose members shall be the Owners of Units within the Commercial Building of Lines III Condominiums, a Planned Community, its successors and assigns.

1.17 Reserved Parcel. "Reserved Parcel" means a 4200 square foot parcel of the Real Property reserved to the ownership of the Declarants, out of the General Common Elements, lying somewhere to the west of the Residential Building, at an unspecified location to later be determined by Declarants, but not closer than twenty-five (25) feet to the Residential Building. Until such time as the boundaries of the Reserved Parcel are specifically located, determined and designated by Declarants, the Reserved Parcel shall be considered a part of the General Common Elements and shall be maintained as such by the Residential Association. The Reserved Parcel is a building pad or footprint for the location, if ever, of the Commercial Building and all Exclusive Common Elements related to the Commercial Building. Such Commercial Building and its Exclusive Common Elements must be constructed entirely within the 4200 square foot footprint of the Reserved Parcel.

## II. DECLARATION AND EFFECT THEREOF.

2.1 Declaration. Declarants for themselves, their heirs, personal representatives, successors and assigns, as Owners of the Project, hereby declare that the Project shall at all times be owned, liened, held, used and occupied subject

to the provisions of this Declaration.

2.2 Division Into Units. The Project is hereby divided into a maximum of six (6) Units within each of the Buildings, each consisting of a separate fee simple estate in a particular Individual Space and an appurtenant fee simple undivided interest in the Exclusive Common Elements designed for exclusive use with such Individual Space, and a similar interest in the General Common Elements.

2.3 Association Ownership of Common Elements. The Exclusive Common Elements and the General Common Elements shall be owned, and are hereby conveyed, in fee simple to the Residential Association, subject to the beneficial use thereof by the Owners and the other rights herein expressed. Until such time as the Residential Association comes into existence upon the first conveyance of a Unit by Declarants as hereafter provided, Declarants shall retain complete authority over and control of the Project, and any functions and duties enjoyed upon the Residential Association herein shall be performed and fulfilled by the Declarants. The Residential Association, upon realizing its existence, shall acquire title by after-acquired title. Upon construction of the Commercial Building, if ever, the Commercial Association shall come into existence in a manner similar to the Residential Association, and title to and responsibility for, the General Common Elements, shall thereafter be held equally by both Associations. Title to the Exclusive Common Elements appurtenant to the Commercial Building shall automatically hereby be conveyed to the Commercial Association, by after-acquired title, if necessary, and such title shall be held subject to the beneficial use of the Commercial Owners.

2.4 Description of a Unit. Any instrument affecting a Unit may legally describe it by reference to the identifying Unit number and Building shown on the Map. This identifying number for a Unit in the Project is the number on the Map identifying the Individual Space which is part of that Unit. A legal description of a Unit in the building may be in the follow form:

Unit \_\_\_\_\_ (Residential or Commercial Building)  
Lines III Condominiums  
according to the Plat thereof recorded \_\_\_\_\_, 2005, as Reception  
No. \_\_\_\_\_, and according to the Condominium Declaration recorded  
\_\_\_\_\_, 2005 in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Reception  
No. \_\_\_\_\_.

County of Garfield  
State of Colorado

and any conveyance or other instrument affecting title to a Unit or any part thereof shall be deemed to include and describe the entire Unit, and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefiting or burdening the Unit under the terms of this Declaration.



Any reference to the Lines III Condominiums in any description shall mean the Lines III Condominiums, a Planned Community according to the Map and this Declaration; both as filed and recorded in the office of the Clerk and Recorder of Garfield County, Colorado.

2.5 Duration of Ownership. The ownership of the Project created under this Declaration shall continue until this Declaration is terminated or revoked as hereinafter provided.

2.6 Inseparability. The interests of an Owner in an Individual Space and the Exclusive Common Elements and the General Common Elements which constitute a Unit shall be inseparable for the period of ownership hereinabove described.

2.7 Ad Valorem Taxation. All taxes, assessments and other charges of the State of Colorado or of any of its political subdivisions or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Unit separately and not on the Building or the Project as a whole and each Unit shall be carried on the tax books as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation of the Exclusive Common Elements and the General Common Elements shall be included in the assessment of the Unit of which it is an appurtenance and the Declarant shall deliver to the County Assessor of Garfield County, Colorado, a written notice as required by the Colorado Common Interest Ownership Act, setting forth descriptions of the Units and shall furnish all necessary information with respect to such apportionment of valuation of the Exclusive Common Elements and the General Common Elements for assessment. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

2.8 Mechanic's Lien. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of the Owner of such Unit or his agent, contractor or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Exclusive or General Common Elements comprising an appurtenance to such Unit. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Unit, or any part thereof, of such other Owner for labor performed or materials furnished for use in connection with the first Owner's Unit. At the written request of any Owner, the Residential or Commercial Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and/or for which the materials were furnished the amount necessary to discharge any such lien, including all costs, incidental thereto, including attorney's fees. If not promptly paid, the Residential or Commercial Association may collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

### III VARIOUS RIGHTS AND EASEMENTS.

3.1 Owner's Right to Exclusive and General Common Elements. Subject to the provisions of this Declaration, each Owner and each Owner's Guests shall have a nonexclusive right to use and enjoy for the intended purpose, the Exclusive and General Common Elements, provided there is not hindrance or encroachment upon the lawful rights of use and enjoyment of other Owners and their Guests as described in this Declaration and the rules and regulations of the Residential or Commercial Association. The rights of Owners in one of the Buildings shall not extend to the Exclusive Common Elements of the other of the two Buildings. The ownership interest of each Owner in the Exclusive and General Common Elements shall be an individual one-twelfth (1/12<sup>TH</sup>) interest.

3.2 Owners Rights in Individual Space. Subject to the provisions of this Declaration, each Owner shall have full and complete dominion and ownership of the Individual Space which is part of the Unit owned by such Owner and each Owner and each Owner's Guests shall have the exclusive right to use and enjoy the same.

Each Owner shall have the right to paint, repaint, tile, carpet, paper and otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors which are within the boundaries of this Individual Space.

3.3 Residential or Commercial Association Rights. Each Association shall have the right or easement, as the case may be, to make such use of the General Common Elements, Exclusive Common Elements, and the Individual Space as may be necessary or appropriate for it to perform the duties and functions which it is obligated or permitted to perform under this Declaration; provided, however, that any entry into an Individual Space shall be made with as little inconvenience as practicable to the Owner and that any damage to the Unit entered shall be repaired by, and at the expense of, the appropriate Association.

3.4 Owners Easements for Access, Support and Utilities. Each Owner shall have a non-exclusive easement in common with all the other Owners for access to and from their Individual Space which is part of the Unit of such Owner and public roads and streets, including, without limitation, over open space, landscaped areas, walks, parking areas, driveways, and any other exterior access and/or other easements which are part of the Project; each Owner shall have a non-exclusive easement in and over Exclusive Common Elements and General Common Elements, including within the individual space of another Owner, for horizontal and lateral support of the Individual Space which is part of his Unit and for utility service provided to that Individual Space, including water, sewer, gas, electricity, telephone, internet and television service.

3.5 Easements for encroachments. If any part of the Exclusive Common Elements encroaches or shall hereafter encroach upon an Individual Space, an easement for such encroachment and for the maintenance of the same shall exist. If any part of any Individual Space encroaches or shall hereafter encroach upon the Exclusive Common Elements, or upon another Individual Space, the Owner of that

Individual Space shall have an easement for such encroachment and for the maintenance of the same. Such encroachments shall not be considered to be encumbrances either on the Exclusive Common Elements or on Individual Space. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Map, by settling or shifting of the Building, or by changes in position caused by repair or reconstruction of the Project, or any part thereof.

3.6 Easements in Individual Space for Repair, Maintenance and Emergencies. Some of the Exclusive Common Elements are or may be located within an Individual Space or may be conveniently accessible only through an Individual Space. Either Association ( Residential or Commercial), as to each of the Buildings, shall have an easement for access to each Individual Space and to all Exclusive Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Exclusive Common Elements located therein or accessible therefore or for making emergency repairs therein necessary to prevent damage to the Exclusive Common Elements or to any Individual Space.

3.7 Negligence or Willful Misconduct. Any damage to any Unit caused by the negligence or willful misconduct of either Association or any of its agents during any entry into any Individual Space shall be repaired by and at the expense of the appropriate Association.

3.8 Easements Deemed Appurtenant. The easements and rights herein created for an owner shall be appurtenant to the Unit of that Owner and all conveyances of and other instruments affecting title to a Unit shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

3.9 Right to Combine Units. Subject to the following provisions, an Owner shall have the right to combine a Unit with one or more adjoining Units only after obtaining written approval from the appropriate Association and the Town of Carbondale.

A combination of Individual Space shall become effective only when the Owner of the Individual Spaces which are to be combined executes and records in the Office of the Clerk and Recorder of Garfield County, Colorado, a written statement describing the Individual Spaces to be combined and declaring that the same are combined. Such combination shall not affect the designation nor prevent separate ownership of the Individual Spaces in the future. Upon the combination of Individual Spaces, the combined Individual Spaces shall be the total of the separate interests prior to the combination. In the event of such combination, any part of the building within the new perimeter boundaries of the combined Individual Spaces shall cease to be Exclusive Common Elements if such part of the Building would not have constituted Exclusive Common Elements had the combined Individual Space been originally designated on the map as a single Individual Space. An Owner shall have the right, if such Owner owns

two adjacent Units, to create a doorway between the Individual Spaces in any common wall.

3.10 Partition of Individual Spaces Prohibited. No Owner shall partition or subdivide any Unit so as to convey to a prospective Owner any interest in less than an entire Individual Space; provided, however, that an Owner of a Unit consisting of two or more Units combined pursuant to Article 3.9 may partition and subdivide such Unit into Units conforming to the dimensions of the Individual Spaces described in the Map. This Article is not intended, however, to prohibit joint or common ownership by two or more persons or entities of a Unit.

#### IV. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

4.1 Association Management. Each Association shall be managed in accordance with C.R.S. 38-33.3-301 et.seq. An Executive Board consisting of at least three (3) persons shall manage each Association. The Declarant may initially appoint such Board, but, as Declarant's ownership in the project diminishes, the Unit Owners shall elect the Board. The Executive Board shall carry out the functions and obligations of, and exercise the powers, granted to each Association by C.R.S. 38-33.3-302, and other applicable statutory sections. At such time as there are enough Unit owners who are willing to serve on the Board, the members of the Board shall consist entirely of Unit owners.

4.2 Common Elements Maintenance. Each Association shall be obligated to, and shall, provide for the care, operation, management, maintenance, improvement, repair and replacement of the Exclusive Common Elements and for utility service to the Exclusive Common Elements and to Units. Each Association shall also be obligated to provide and care for its appropriate share of the management, care and expense of the General Common Elements. Without limiting the generality of the foregoing, said obligations shall include keeping the Exclusive and General Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from the Exclusive and General Common Elements to permit access to and throughout the Project to each Unit; keeping the Project safe, attractive and desirable; making necessary or desirable alterations, additions, betterments or improvements to or on the Exclusive and General Common Elements; and paying utility charges except separately metered utilities and trash collection services which shall be paid by the Owner or user of the spaces served thereby. No prior approval of Owners shall be required for such work but prior approval of the appropriate Association, acting through its Board, Members or Manager shall be required for all such work.

4.3 Assessment Function. Each Association may undertake or contract for any lawful activity, function or service for the benefit, or to further the interests of all, some or any Owners of Units on a self-supporting, regular assessment, or supplementary assessment basis.

4.4 Labor and Services. Each Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as the services of such other personnel as said Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by said Association or by any person or entity with whom or which it contracts. Each Association may obtain and pay for legal and accounting services necessary or desirable in connection with operation of the Project or the enforcement of this Declaration.

4.5 Real and Personal Property of Association. Each Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise. Each Association may lease or acquire and hold title to real property, in addition to holding title to the Exclusive and General Common Elements, for the performance of each Association's purposes and functions; provided, that the vote of seventy-five percent (75%) of those Members (Unit owners) voting in person or by proxy shall first be obtained at a regular or special meeting called for the purpose of approving any such leasing or acquisition of real property and the rental or purchase price therefor. Subject to the rules and regulations of each Association, each Owner and each Owner's Guests may use such Association property. Upon termination of ownership of the Project and dissolution of each Association the beneficial interest in any such property shall be deemed to be owned by the then Owners of the Units, an undivided one-sixth (1/6<sup>th</sup>) interest by the Owner of each Unit.

4.6 Construction on Association Property. The Residential Association may construct new improvements or additions to real property owned by the Residential Association or demolish improvements thereon, provided that in the case of any improvements, addition or demolition (other than maintenance or repairs to same), the vote of seventy-five percent (75%) of those Members voting in person or by proxy shall first be obtained at a regular or special meeting called for the purpose of approving such plans and maximum total cost therefor. To insure the protection of the Reserved Parcel, the site location and size of any improvements or additions must be approved by Declarants, or their successors or assigns. After construction of the Commercial Building, the construction of such improvements, additions or demolitions shall require a vote of seventy-five percent (75%) of the Owners of both Associations and no approval by Declarants.

4.7 Association Right to Utilize, Lease or License Exclusive and General Common Elements. The Residential Association, initially, and later both Associations, shall have the right to utilize portions of the Exclusive and General Common Elements for the furtherance of its duties, obligations, rights or privileges. Such utilization may include, but is not limited to, the construction of improvements on the Exclusive and General Common Elements for recreational facilities. Any such improvements shall be undertaken by the Association(s) in accordance with the provisions of Article 4.6, above. The Association(s) shall have the right to make such use of Exclusive and General Common Elements as may be necessary or appropriate for it to perform the duties and functions which it is obligated or permitted to perform under this Declaration. The

Association(s) shall have the right to license or lease to, or permit the use of the Exclusive and General Common Elements or any Unit owned by the Associations, by fewer than all of the Owners or by non-owners and with any charge by the Association(s) which it deems desirable; provided, however, no such lease shall be for a term of longer duration than three (3) years. Any charge by the Association(s) for a license or lease shall be applied to reduce amounts to be raised by regular assessments. Such rights, as described in this Section, shall be subject to the rights of the Declarants in the Reserved Parcel.

4.8 Association Right to Borrow Money. Each Association shall have the right to borrow funds to pay for any expenditures or outlay required to fulfill its duties, obligations, rights or privileges given to it by this Declaration; provided, however, that in the event the loan proceeds exceed an amount equal to twenty-five percent (25%) of each Association's approved annual budget, the Manager shall call a meeting to discuss the same and give thirty (30) days notice thereof to all Members and each or both of the Associations and shall obtain the approval of a majority of the votes present or represented at such meeting. Following such approval, each or both of the Associations may levy a regular or supplementary assessment under the provisions of Article VI for the purpose of the payment of any funds so borrowed and may pledge as collateral for any such loans the assessment so levied together with any of each or both of the Association's real or personal property, including the Exclusive and General Common Elements, but subject to the rights of Declarants in the Reserved Parcel.

4.9 Rules and Regulations. Each Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of Individual Spaces and of the Exclusive and General Common Elements. Such rules and regulations may, without limitation, regulate use of the Exclusive and General Common Elements to assure equitable use and enjoyment by all persons entitled thereto and require that draperies, shades or other window coverings shall present a uniform and attractive appearance from the exterior of the Buildings. Any such rules and regulations made by each or both Associations may be amended from time to time by Member Action.

Each Association shall furnish each Owner with a written copy of each and every rule or regulations adopted pursuant to this Article 4.9; however, failure to furnish said copy shall not be deemed to invalidate said rules or regulations to any extent.

Each Association shall have the right to enforce any of the rules and regulations of each Association or the obligations of any Owner under this Declaration by suspending the right of such Owner to use any recreational areas and facilities within the Project and/or suspending the right of such Owner to vote at meetings of such Association; provided that such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation. No penalty may be imposed under this paragraph until the Owner accused of any such violation has first been notified in writing of the violation and afforded the right to have a hearing before the Members of such Association, or has, in writing, waived such right. Each such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesman, at

any such hearing. Each Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain injunctive relief and damages for noncompliance, all to the extent permitted by law.

4.10 Implied Rights. Each Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.11 Residential and Commercial Association; General Common Elements. If and when the Commercial Building is constructed and the Commercial Association is created, it shall be the obligation of all Owners, Managers, and Members of both Associations to cooperate in the management of, formulate the rules governing, and share equally in the expenses of the General Common Elements.

## V. THE ASSOCIATIONS

5.1 General Purposes and Powers. Both Associations have been or will be formed to be and constitute the Associations to which references are made in this Declaration to perform functions and hold and manage property, and exercise the powers as provided in C.R.S. 38-33.3-302, and in these Declarations where not inconsistent with the statute, to further the interests of Owners of Units in the Project. It shall have all powers necessary or desirable to effectuate these purposes.

5.2 Membership. Each Owner, by virtue of being an Owner and for so long as he is an Owner, shall be a Member of each Association. Membership in each Association shall be appurtenant to the fee simple title to each Unit and title to and ownership of the Membership for the Unit shall automatically pass with fee simple title to the Unit. Each Owner of a Unit shall automatically be entitled to the benefits and subject to the burdens relating to the Membership for this Unit. If fee simple title to a Unit is held by more than one person or entity, the membership appurtenant to that Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as fee simple title to the Unit is held. Memberships in each Association shall be limited to Owners of Units in the Project.

5.3 Member Action. Unless otherwise herein provided, each Association shall make all decisions, take all actions, exercise all powers and fulfill all obligations required of its hereunder by Member Action, which shall consist of the affirmative vote of the Owners of a majority of the Units at any meeting called in accordance herewith, or without a meeting, by the written approval of any particular action by the Owners of not less than five (5) of the Units, provided that the Owners of all of the Units are provided an opportunity to approve or disapprove any such action in writing. Any reference herein to any exercise of authority by or fulfillment of any obligations enjoined upon each Association shall be undertaken by member Action, whether or not specifically expressed in any particular provision hereof.

5.4 Voting of Owners. Each Owner shall have one vote. Voting by proxy shall be permitted. In the event of multiple Owners of the same Unit, the multiple Owners shall share the vote assigned to the Unit so owned in the same proportionate interest as fee simple title to the Unit is held. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of any Unit to a new Owner or Owners shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto.

5.5 Manager. Each Association by member Action, from time to time and for a term to be specified in such action, may appoint a Manager to perform the various functions and exercise the various powers herein delegated by the Members and/or the Executive Board. The Manager shall be one of the Owners, and shall be reasonably compensated by each Association for its services and reimbursed for his expenses incurred in performance of his duties.

5.6 Notices. In accordance with the provisions of C.R.S. 38-33.3-205(c) all matters affecting the common interests of the Unit owners shall be decided at a meeting of the owners, unless such matter has been previously delegated to the Executive Board or the Manager. Each Owner shall be entitled to notice of any meeting at which such Owner has the right to vote. Notices of meetings shall be in writing and shall state the date, time and place of the meeting and shall indicate each matter to be voted on at the meeting which is known to each Association at the time notice of the meeting is given. Such notices shall be given not less than ten (10) nor more than fifty (50) days before the date for the meeting. Any notice shall be deemed given and any budget or other information or material shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail, postage or charges prepaid; addressed to the party, or, in any event, when such party actually receives such notice, information or material. Any notice, information or material shall be deemed properly addressed to an Owner if it is addressed to the name and address shown on the most recent written notice of name and address, if any, furnished to the appropriate Association by such Owner or, if a name and address is not so furnished, if it is addressed "To The Owner" at the address of the Unit or such Owner.

5.7 Record Date. The Manager of each Association shall have the power to fix in advance a date as a record date for the purpose of determining Owners entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Owners for any purpose. The Owners existing on any such record date shall be deemed the Owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of Owners is proposed or expected to be taken or to occur. If no record date is established for a meeting the date on which notice of such meeting is first given to any Owner shall be deemed the record date for the meeting.



5.8 Quorums. The presence of Owners who hold votes equal to one-half (1/2) of the total voting power of each particular Association, in person or by proxy, at a meeting to consider a matter shall constitute a quorum for consideration of that matter. If a quorum is established for consideration of that matter, except if a greater percentage of votes are required under a specific provision of this Declaration, a majority of the votes cast on the matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.

5.9 Statement of Authority. A Statement of Authority as required under the provisions of C.R.S. 7-30-105 shall be prepared and filed by each Association simultaneous with conveyance of the first Unit of Declarant and upon such filing of the Statement of Authority each such Association shall come into being and exist for all purposes set forth therein.

## VI. ASSESSMENTS.

6.1 Assessments. Each Owner shall be obligated, and shall pay to the appropriate Association, amounts as hereinafter provided, which amounts are herein called Assessments. Assessments shall include Regular and Supplementary Assessments.

Subject to the provisions hereof, each Association by Member Action, shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments should be paid to said Association, and each Owner shall comply with all such determinations.

6.2 Determination of Budgets and Assessments. The fiscal year of each Association shall be determined by Member action of the Association at its first meeting. Within thirty (30) days prior to the commencement of each fiscal year of each Association, the Members by Member Action shall determine the total amount to be raised by Regular Assessments during such fiscal year. The amount to be raised by Regular Assessments for any fiscal year shall be that amount necessary to cover the costs and expenses of fulfilling the functions and obligations of the particular Association in that fiscal year plus the amount necessary for the capital reserve fund for contingencies, exterior maintenance, construction or reconstruction, repair or replacement of the Project plus an amount sufficient to provide a reasonable carryover reserve for the next fiscal year and such determined amount shall constitute the annual budget. The amount to be raised by Regular Assessments shall include amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved annual budget. The total amount required to be raised by Regular Assessments for any fiscal period less than a full fiscal year shall be the total amount or annual budget required to be raised for the fiscal year determined as above multiplied by a fraction, the numerator which is the number of days in the fiscal period and the denominator of which is the number of days in that fiscal year.

To determine the total amount required to be raised by Regular Assessments, the Manager shall prepare or cause to be prepared and the members approve a budget for the fiscal year showing, in reasonable detail, the estimated costs and expenses which will be payable in that fiscal year, the amount necessary for the capital reserve and maintenance fund, if any, and for a reasonable carry-over reserve. The Members shall subtract from such estimated costs and expenses an amount equal to the anticipated surplus (exclusive of any reserve funds) attributable to Regular Assessments collected but not disbursed in the fiscal year immediately preceding the fiscal year for which such estimate has been prepared. The Manager shall furnish a copy of the proposed budget to each Owner.

If the Members fail to determine or cause to be determined the total amount to be raised by Regular Assessments in any fiscal year, and/or fail to notify the Owners of the amount of such Regular Assessments for any fiscal year, then any funds held by or on behalf of the particular Association, including capital reserve and maintenance funds, may be used for the operation of the Project.

Except as emergencies may require each Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to such Association.

In addition to Regular Assessments, the Members may levy Supplementary Assessments, payable over such period as the members may determine: (a) for the purpose of defraying, in whole or in part, to the extent the amounts in the capital reserve fund are insufficient therefor, the cost of any construction or reconstruction, repair or replacement of the Project or any part thereof; (b) for the purpose of defraying any other expense incurred or to be incurred as provided in this Declaration; or (c) to cover the deficiency, in the event that, for whatever reason, the amount received by each Association from Regular Assessments is less than the amount determined and assessed by such Association.

6.3 Apportionment of Assessments. The Assessments shall be made on a ratable basis, with Owners of each Unit being assessed for one-twelfth (1/12<sup>th</sup>) of the total Assessment whether a Regular Assessment or Supplemental Assessment.

6.4 Time for Payments. Unless otherwise established by Member Action, the amount of an Assessment or other amount payable with respect to any Owner or Unit shall become due and payable uniformly as specified by the Manager of the particular Association and, in any event, thirty (30) days after notice of the amount due as to such Assessment or other amount shall have been given by the Manager to such Owner, and any such amount shall bear interest from the date due and payable until paid at the rate established from time to time by Member Action.

6.5 Lien for Assessments and Other Amounts. Each Association shall have a lien against each Unit to secure payment of an Assessment or other amount due and owing to such Association with respect to the Owner of that Unit or with respect to such Owner's Guests or Unit, plus interest from the date due and payable, plus all costs and

expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosures of mortgages in the State of Colorado. If any Owner is deemed to be in default hereunder and fails to cure such default within thirty (30) days, the appropriate Association shall give written notification of such default to any First Mortgagee of the Unit owned by such Owner whose name and address is expressly provided in the recorded mortgage, deed of trust or other lien. The lien for Assessments shall have priority over all other liens and encumbrances on or against a Unit except for the lien for general ad valorem taxes and the lien of a First Mortgage.

6.6 Estoppel Certificate. Upon the payment of a reasonable fee as the same shall be established from time to time by Member Action and upon written request of any Owner or any person with any right, title or interest in a Unit or intending to acquire any right, title or interest in a Unit, the appropriate Association shall furnish a written statement setting forth the amount of Assessments or charges, if any, due or accrued and then unpaid with respect to the Unit, the Owner, and such Owner's Guests and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Unit, which statement shall, with respect to the party to whom it is issued, be conclusive against the appropriate Association that no greater or other amounts were then due or accrued and unpaid.

6.7 Liability of Owners, Purchasers and Encumbrances. The amount of any Assessment charge owing to a particular Association by any Owner under this Declaration shall be a personal obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. A party acquiring fee simple title to a Unit, by means other than foreclosure of a First Mortgage, shall be jointly and severally liable with the former Owner for all amounts which had accrued and which were payable at the time of the acquisition of fee simple title to the Unit by such party without prejudice to such party's right to recover any of said amounts paid from the former owner. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the appropriate Association without foreclosing or waiving any lien securing the same.

## VII. RESERVED PARCEL.

7.1 Declarants' Reservation. Declarants hereby reserve and set aside unto themselves, from any conveyance Declarants may hereafter sign, make and deliver of any part or portion of the Real Property, all of their right, title and interest in and to the Reserved Parcel as described and defined, or as such may later be more specifically defined and described, according to Section 1.17 of the Definitions of this Declaration, and subject to termination and defeasance of the Reserved Parcel as hereinafter described.

7.2 Site Specific Location. At any time, prior to defeasance or termination of the Reserved Parcel, the Declarants may carve out of the General Common Elements a specific 4200 square foot area for the Reserved Parcel, no closer than twenty-five feet (25') to the Residential Building, by recording a surveyed legal description in the office

of the Clerk and Recorder of Garfield County , Colorado in the form of an Amendment to this declaration, or an Amendment to the Map described in Section 1.6, hereof. The effect of specifying the locations of the Reserved Parcel shall be to disencumber the remainder of the General Common Elements from the Reserved Parcel.

7.3 Maintenance. The Reserved Parcel, as part of the General Common Elements, shall be maintained by the Residential Association, until such time as a Certificate of Occupancy is issued by the Town of Carbondale for the completed Construction of the Commercial Building on the Reserved Parcel. During construction the Reserved Parcel shall be maintained by Declarants, or their successors and assigns. After the issuance of a Certificate of Occupancy, the Reserved Parcel shall cease to exist and the land and improvements located upon the former Reserved Parcel shall be maintained by either the Commercial Unit Owners (as to Units), the Commercial Association (as to Exclusive Common Elements) or the Residential and Commercial Associations, jointly (as to General Common Elements).

7.4 Exemption From Unit Liens. No liens for mortgages, deed of trust, judgments, mechanics liens, attachments, or other specific liens granted, levied or attached against a Unit within the Residential Building shall be effective to hold encumber, secure, or attach to the Reserved Parcel. Such liens may include the remainder of the property comprising the General Common Elements, but the Reserved Parcel shall be excepted or exempt therefore. Upon defeasance or termination of the Reserved Parcel, such parcel shall again become a part of the General Common Elements, and all such liens shall attach.

7.5 Commercial Owner's Association. No later than ninety (90) days after the issuance, if any, of a Certificate of Occupancy for the construction of the Commercial Building, or at the time the first commercial Unit therein is sold and recorded, whichever occurs first, the Declarants, or their successors and assigns, shall legally form and establish the Commercial Association. After establishment of the Commercial Association, it and the Residential Association shall have equal responsibility for all of the General Common Elements, including any part thereof located on what was formerly the Reserved Parcel. The expenses of the General Common Elements for maintenance operation and repair shall be shared equally. The two Associations shall work together to fulfill their joint responsibilities and sharing of expenses.

VII. USE AND OTHER RESTRICTIONS.

8.1 Individual Space Restriction.

A. Residential Units.

Each of the Individual Spaces identified on the Map of the Residential Building (the "Residential Units") shall be used and occupied for single family residential purposes only, and none of such Units shall be used at any time for business or commercial activity except that an Owner may lease or rent his Unit for such single-family residential purposes, provided that any such lease or tenancy is for a period of not less than thirty (30) days. Provided, however, that each Unit may have up to two (2) additional individual renters or tenants, but in no case shall more than two (2) occupancies occupy one bedroom.

B. Commercial Units.

Each of the Individual Spaces which may hereafter be identified on the Map as Commercial Units shall be used for commercial purposes only and the use of such Units shall be limited and restricted to the uses allowed under the Crystal Village PUD Zone District Revision Commercial/Office District (the "PUD Regulations") as set forth in instrument recorded as Reception No. 424760 in Book 807 at Page 49 of the records of Garfield County, Colorado, whether such aforesaid commercial uses are allowed as Permitted Uses, Special Uses, or Uses Not listed in the PUD Regulation. The foregoing notwithstanding, none of such Units shall be used for the following purposes:

- i.) a mortuary
- ii.) a small animal clinic
- iii.) a pet store
- iv.) a child care center or a pre-school

C. PUD Regulation.

All uses of all Residential Units and Commercial Units as well as the Exclusive and General Common Elements shall be subject to, governed, restricted and regulated by the provisions of the PUD Regulation.

8.2 Common Elements Restrictions. No Owner, and not Owner's Guest, shall obstruct, damage or commit waste to any of the Exclusive or General Common Elements. No Owner, and no Owner's Guest, shall change, alter or repair, or store anything in or on, any of the Exclusive or General Common Elements without the prior written consent of the Association.

8.3 No Imperiling of Insurance. No Owner and No Owner's Guest shall, without the prior consent of the Association, do anything or cause anything to be

kept in or on the Project which might result in an increase in the premiums for insurance obtained for the Project or which might cause cancellation of such insurance.

8.4 No Violation of Law. No Owner and no Owner's Guest shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

8.5 No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on or in any part of the Project, which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted, and no improvements shall be made or constructed, on any part of the Project which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying to others. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of the Project which is unreasonably bright or causes unreasonable glare.

8.6 No Unsightliness. No unsightliness shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in any of the Exclusive or General Common Elements, nothing shall be hung or placed upon any of the Exclusive or General Common Elements, and nothing shall be placed on or in windows or doors of Individual Spaces which would or might create an unsightly appearance.

8.7 Restriction on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the appropriate Association. Such Association shall permit the placing of at least one sign of reasonable size and dignified form to identify the Project and the Units therein. Nothing herein contained shall prohibit or restrict in any way the Declarant's right to construct such promotional signs or other sales aids on or about any portion of the Project which he shall deem reasonably necessary in connection with his sale of the Units. All signage shall comply with Section 18.50.080 Street Graphics of the Carbondale Municipal Code.

8.8 Antennas. No radio, television or other type of antenna shall, without the written consent of the appropriate Association, be installed or maintained on the roof or exterior of the Building.

8.9 Maintenance of Individual Space. Each Individual Space, and all improvements, fixtures, furniture and equipment therein shall be kept and maintained by the Owner thereof in a safe condition and in good repair. No structural alterations within any Individual Space shall be made and no electrical, plumbing or similar work within any Individual Space shall be done without the prior written consent of the appropriate Association.

8.10 No Violation of Rules. No Owner's Guests shall violate the rules and regulations adopted from time to time by either of the Associations whether relating to the use of Units, the use of the Exclusive and General Common Elements, or otherwise, and violations of the rules and regulations by any Owner's Guests shall be treated as a violation by such Owner and shall be enforceable in accordance with Article 4.9 thereof.

8.11 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property, including the Building, the Exclusive or General Common Elements, or any Individual Space, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the appropriate Association and the insurer has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner, and such amount shall be enforceable as an Assessment in accordance with Article VI hereof.

8.12 Animals. No dogs whatsoever shall be permitted, kept or maintained on a temporary or permanent basis on any part of the Building or the Project.

## VIII. INSURANCE.

9.1 Insurance Requirements Generally. Each Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. Both Associations shall collaborate to provide, and share equally, the expense of, all insurance on the General Common Elements. Each of the Associations shall insure, and pay for, all risks associated with the Exclusive Common Elements appurtenant to that Association's Building. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Colorado. All such insurance shall name as insured the appropriate Association, the Members, and the Executive Board of such Association, such Association's employees and agents and the unit Owners, in their capacity as Owners. All such insurance shall protect such of the insured as if each were separately insured under separate policies. To the extent possible such casualty insurance shall: a) provide for a waiver of subrogation by the insurer as to claims against Declarant, the Association, its Members, Executive Board, Managers, employees, and agents and against each Owner and each Owner's employees and Guests; b) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, its Members, Executive Board, Managers, employees and agents of any Owner or such Owner's employees or Guests; c) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee and that insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee; d) contain a standard mortgage clause endorsement in favor of the Mortgagee of any Unit or part of the Project except a Mortgagee of a Unit or part of the Project who is covered by other and separate insurance; e) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least ten (10) days' prior written notice to the

Association and to each Owner and to each Mortgagee covered by any standard mortgage clause endorsement; (f) be in the form of a single policy covering all of the improvements in the entire Project; and (g) provide that the insurer shall not have the option to restore the Building if ownership of the Project is to be terminated in accordance with the terms of this Declaration or if the Building is to be sold in accordance with the destruction, condemnation and obsolescence provisions of this Declaration. To the extent possible, public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners, and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Members of the Association deem consistent with good business practice.

Each Association shall obtain an independent appraisal of the Building every three years; provided, however, that said appraisal may be performed by an appraiser employed by an insurance company.

Certificates of insurance coverage or copies of insurance policies shall be issued to each Owner and each Mortgagee who makes written request to the Association for any such certificate or copy of an insurance policy.

The cost and expense of all insurance obtained by each Association, except insurance covering additions, alterations or improvements made to a Unit by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be an expense of the appropriate Association, for which the Association shall levy and collect an Assessment in accordance with provisions of Article VI.

9.2 Casualty Insurance. Each Association shall obtain and maintain casualty insurance covering the Building and each Unit covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, with vandalism and malicious mischief endorsements, and, if available, and if deemed appropriate by the Association, war risk, for the full insurable replacement cost of the Building, including each Unit. At the option of each Association such insurance may also cover additions, alterations or improvements to a Unit made by an Owner if the Owner reimburses the Association for any additional premiums attributable to such coverage. Each Association shall not be obliged to apply any insurance proceeds to restore a Unit to a condition better than the conditions existing prior to the making of additions, alterations or improvements by an Owner in the absence of insurance covering such additions, alterations or improvements as aforesaid.

9.3 Public Liability and Property Damage Insurance. Each Association shall obtain and maintain comprehensive public liability and property damage insurance covering personal liability and property damage liability of such Association, its Members, Manager, employees and agents and of each Owner and each Owner's employees and Guests, arising in connection with ownership, operation, maintenance, occupancy or use of the Building, of any Unit in the building or the Exclusive Common Elements, with limits of not less than \$1,000,000.00 for each occurrence involving bodily



injury liability and/or property damage liability. Similarly, both Associations, acting jointly, and equally sharing the expenses thereof, shall provide public liability and property damage insurance for the General Common Elements with limits of liability as above described.

9.4 Worker's Compensation and Employer's Liability Insurance. Each and/or both Associations shall obtain and maintain worker's compensation and employer's liability insurance as may be necessary to comply with applicable law.

9.5 Insurance by Owners. Except to the extent coverage therefor may be obtained by the appropriate Association and be satisfactory to an Owner, each Owner shall be responsible for obtaining insurance he deems desirable including, without limitation, casualty insurance covering furnishings and personal property belonging to that Owner and insurance covering personal liability of that Owner and that Owner's employees and Guests. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent possible, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, its Members, Executive Board, Manager, agents and employees and against other Owners and their employees and Guests. A copy of any insurance policy obtained by an Owner shall be furnished to the appropriate Association.

9.6 Receipt and Application of Insurance Proceeds. Except as some particular person has legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the appropriate Association(s). All insurance proceeds or recoveries received by the appropriate Association(s) shall be applied by the Association(s): first, as expressly provided elsewhere in this Declaration; second, to the Owner's or persons whom the Association(s) may determine are legally or equitably entitled thereto; and third, the balance, if any, to Owners of Units in accordance with each such Owner's interest in the Exclusive or General Common Elements appurtenant to his Unit, such interest being a proportionate one-sixth (1/6<sup>th</sup>) interest in the Exclusive Common Elements appurtenant to each Unit, and the appropriate proportionate interest in the General Common Elements.

9.7 Other Insurance by Association. Each Association shall have the power or authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of a particular Association and insurance indemnifying Members, Executive Board, Manager, employees and agents of such Association.

9.8 Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any Unit, or of any owner-installed improvements to any Unit, the premiums of any policy of insurance purchased by a particular Association are increased, or a special policy is required, the cost of such increase or special policy shall be payable by the owner of such Unit.

9.9 Declarants Insure Reserved Parcel. It shall be Declarants' responsibility to provide public liability, property damage, builder's risk and workmen's compensation insurance for the Reserved Parcel, as may be appropriate. Neither the Residential Owners nor their Association shall have any liability therefor, and Declarants specifically hold them harmless against loss, including legal fees and expenses. On request, the Declarants shall provide a Certificate of Insurance to the Residential Association.

X. DESTRUCTION, CONDEMNATION, OBSOLESCENCE, AND RESTORATION OR SALE OF THE BUILDING.

10.1 Certain Definitions. The following terms shall have the following definitions:

(a) Substantial and Partial Destruction. "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Building, the excess of Estimated Costs of Restoration (as hereinafter defined) over Available Funds (as hereinafter defined) is fifty percent (50%) or more of the estimated Restored Value (as hereinafter defined) of the Building. "Partial Destruction" shall mean any other damage of the Building or any part thereof.

(b) Substantial and Partial Condemnation. "Substantial Condemnation" shall exist whenever a complete taking of a particular Building or a part thereof has occurred under eminent domain or by grant or conveyance in lieu of condemnation has occurred, and the excess of the Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of such Building. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu of eminent domain.

(c) Substantial and Partial Obsolescence. "Substantial Obsolescence" shall exist whenever seventy-five percent (75%) of the Owners of a particular Building determine, by vote, that Substantial Obsolescence exists or whenever such Building or any part thereof has reached such a state of obsolescence or disrepair that the excess of Estimated Costs or Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of such Building. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(d) Restoration. "Restoration", in the case of any damage or destruction, shall mean restoration of a particular Building to a condition the same or substantially the same as the condition in which it existed prior to the damage or destruction; in the case of condemnation, shall mean Restoration of the remaining portion of such Building to an attractive, sound and desirable condition; and, in the case of obsolescence, shall mean restoration of such Building to an attractive, sound and desirable condition.

(e) Restored Value. "Restored Value" shall mean the value of a particular Building after Restoration as estimated by the Members of the Association.

(f) Estimated Costs of Restoration. "Estimated Costs of Restoration" shall mean the estimated costs of Restoration, as determined by the Members of the appropriate Association(s).

(g) Available Funds. "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation attributable to the Building plus a percentage of any uncommitted income or funds of the appropriate Association including funds from the capital reserve fund and the carry-over reserve fund of a particular Building. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the appropriate Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner of a Unit for the condemnation or taking of that Owner's Individual Space.

10.2 Determination by the Members. Upon the occurrence of any damage or destruction to a particular Building or any part thereof, or upon a complete or partial taking of the Building under eminent domain or by grant or conveyance in lieu of condemnation, the Members shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Fund is fifty percent (50%) or more of the estimated Restored Value of the Building. In addition, the Members shall, from time to time, review the condition of the Building to determine whether Substantial Obsolescence exists.

10.3 Restoration of a Building. Restoration of a particular Building shall be undertaken by the appropriate Association without a vote of owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence but shall be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence only with the consent of the Owners of seventy-five (75%) of the Units in the Building and the consent of the First Mortgagees who hold security interests in those Units. In the event the insurance proceeds actually received exceed the cost of Restoration when such Restoration is undertaken pursuant to this Article, the excess shall be paid and distributed to all of the Owners of Units in the Building, a ratable one-sixth ( $1/6^{\text{th}}$ ) share to each Unit Owner.

10.4 Sale of a Building. Either Building shall be sold in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence unless consent to Restoration has been obtained from the owners of seventy-five (75%) of the Units in the Building and from the First Mortgagees who hold security interests in those Units. In the event of such sale, ownership of the Building under this Declaration shall terminate and the proceeds of sale and any insurance proceeds, condemnation awards or payment in lieu of condemnation shall be distributed by the Association to the Owners of Units in the Building on the basis of a one-sixth ( $1/6^{\text{th}}$ ) share to the Owner of each of the Units. Payments to be made to Owners hereunder shall be made jointly to Mortgagees as to Units which are mortgaged at the time of such payment.

10.5 Authority of Association(s) to Restore or Sell. Either Association, as attorney-in-fact for each Owner, shall have full power and authority to restore or to sell the building and each Unit in the Building whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

10.6 Payment of Proceeds. All insurance proceeds or proceeds of sale shall be paid to the appropriate Association as trustee for all of the Owners and all Mortgagees, as the interest of such Owners and such Mortgagees may appear, subject to the obligation of such Association to restore the Buildings as provided herein.

10.7 Supplementary Assessments for Restoration. Whenever Restoration is to be undertaken, the appropriate Association may levy and collect Supplementary Assessments from each Owner of a Unit in the Building to cover the costs and expenses of Restoration to the extent not covered by Available Funds. Such Supplementary Assessments shall be apportioned one-sixth ( $1/6^{\text{th}}$ ) share of the total Supplementary Assessment to the Owner of each Unit. Such Supplementary Assessment shall be payable over such period as the Association may determine, and shall be secured by a lien on the Unit of each such Owner as in the Case of Regular Assessments. Notwithstanding any other provisions in this Declaration to the contrary, in the case of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, any such Supplementary Assessment shall not be a personal obligation of any such Owner who did not consent to Restoration, but, if not paid, may be recovered only by foreclosure of the lien against the Unit of such Owner.

10.8 Receipt and Application of Condemnation Funds. All compensation, damages or other proceeds constituting awards for a complete taking of the Building or a taking of part of the Building under eminent domain or by grant or conveyance in lieu of condemnation shall be payable to the appropriate Association. The amount thereof allocable to compensation for the taking of or injury to the Individual Space of a particular Unit or to improvements of any Owner therein shall be apportioned to the Owner of that Unit. The balance of the award shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows: first, any portion of the award allocable to the taking of or injury to the Exclusive or General Common Elements shall be apportioned among all Owners of Units in the Building, a one-sixth ( $1/6^{\text{th}}$ ) share to the Owner of each Unit; second, the amounts allocable to severance damages with respect to condemnation of a portion of the Building shall be apportioned among Owners with Individual Spaces in the Building which was not taken or condemned, on a ratable basis; and third, the amounts allocated to consequential damages or for other purposes shall be apportioned as the Association determines to be equitable under the circumstances.

10.9 Reorganization in the Event of a Condemnation. In the event all of the Individual Space Units are taken in condemnation, the Unit containing that Individual Space shall cease to be part of the Project, the Owner thereof shall cease to be a Member

of the Association, and any interest in Exclusive or General Common Elements appurtenant to that Individual Space shall automatically become vested in the Owners of the remaining Units in the Building on a ratable basis.

10.10 Voting. Except as is provided in this Article X, the Votes of all Owners of all Units in the entire Building shall be considered one hundred percent, for such voting purposes.

## XI. COMMONLY OWNED UNITS.

11.1 Commonly Owned Units. Any Unit owned by a particular Association shall be deemed a "Commonly Owned Unit." A Commonly Owned Unit may be a Unit acquired by such Association by foreclosure or liens, purchase or otherwise. Notwithstanding the fact that any Unit may constitute a Commonly Owned Unit, the Individual Space shall not be deemed part of the Exclusive Common Elements.

11.2 Votes and Assessments for Commonly Owned Units. Notwithstanding any other provisions of this Declaration to the contrary, for so long as any Unit is a Commonly Owned Unit, there shall be no regular membership in the Association for that Unit; no vote assigned to that Unit; and no Assessment levied or paid with respect to that Unit. If any Unit is a Commonly Owned Unit upon termination of ownership of the Building, the beneficial interest in such Unit shall be deemed owned in common by the then Owners of all other Units on a ratable basis.

11.3 Sales or Lease of Commonly Owned Units. The appropriate Association may sell any Commonly Owned Units for their fair market value and shall have the right to lease or permit the use of any Commonly Owned Unit in the same manner as provided in Article 4.7 with respect to the Exclusive and General Common Elements.

## XII. MISCELLANEOUS.

12.1 Duration of Declaration. Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for a period of twenty-one years following the death of Carl George Lines and Tong Luu, Collectively, until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect until ownership of the Project and this Declaration is terminated or revoked as hereinafter provided.

12.2 Amendment and Termination. Upon approval of the Town of Carbondale, any provision contained in this Declaration may be amended, or additional provisions may be added to this Declaration, or this Declaration and ownership of the Project may be terminated or revoked, by the recording of a written instrument or instruments specifying the amendment or addition or the fact of termination and revocation, executed by seventy-five percent (75%) of all Owners and of all First Mortgagees of the Units owned by those same Owners, as shown

by the records in the office of the County Clerk and Recorder of Garfield County, Colorado. No such amendment to this Declaration shall have the effect of prohibiting the use of any Unit for a purpose which is valid under the provisions of Section 7.1 hereof at the time of such amendment. As used herein, "Owners" may refer to the Owners in both the Commercial and Residential Buildings, if the Commercial Building is constructed.

12.3 Effect of Provisions of Declaration. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the appropriate Building or in any Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in the appropriate Building or in any Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representative, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of the appropriate Association, but not to, with or for the benefit of any other Owner; (c) shall be deemed a real covenant by Declarant, for himself, his personal representative, heirs, successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the appropriate Building and each Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Building and each Unit; and (d) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the appropriate Association, burdening and encumbering the title to the appropriate Building and each Unit in favor of the appropriate Association.

12.4 Enforcement and Remedies. In addition to any other remedies herein provided, each provision of this Declaration with respect to an Owner or the Unit of an Owner shall be enforceable by the appropriate Association(s) or by any individual Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or both. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party its costs and expenses in connection therewith, including reasonable attorney's fees.

Furthermore, if any violation or breach of this Declaration shall also constitute a violation of the Ordinance of the Town of Carbondale approving the condominium exemption for this Project, or any other Town Ordinance, in addition to any remedy as provided by law, the Town may enforce the provisions of this Declaration and may recover reasonable attorney's fees, if successful.

12.5 Protection of Encumbrancer. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage or Deed of Trust on any Unit taken in good faith and for value and perfected by recording in

the Office of the County Clerk and Recorder of Garfield County, Colorado prior to the time of recording in said office of an instrument describing the Unit and listing the name or names of the Owner or Owners of fee simple title to the Unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such First Mortgage or Deed of Trust or the title or interest acquired by any purchaser upon foreclosure of any such mortgage or deed of trust or by deed in lieu of foreclosure or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure or by deed in lieu of foreclosure shall, however, take subject to this Declaration except only (a) violations or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereto or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns, and (b) such purchaser shall take the property free of any claims for unpaid Assessments or other amounts against or applicable to the encumbered Unit. Provided, however, that in no event shall this Section 12.5 ever be interpreted or construed to attach any lien to the Reserved Parcel, contrary to the provisions of Section 7.5, unless and until the Reserved Parcel is terminated or developed by construction of the Commercial Building thereon, and a Certificate of Occupancy shall issue therefor.

12.6 Limited Liability. Neither Declarants, either Association, the Members, the Executive Board(s) and the Manager(s) of either Association, nor any agent or employee of any of the same shall be liable to any party 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.

12.7 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of either or both Associations, and each Owner and the heirs, personal representatives, successors and assigns of each.

12.8 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provisions or any valid and enforceable part of a provision of this Declaration.

12.9 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

12.10 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

12.11 Further Assurances. The Association and each Owner hereby agree to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of this Declaration.

