

**TABLE OF CONTENTS
OF
CONDOMINIUM DECLARATION FOR
TRIANGLE PARK LOFTS**

ARTICLE I - RECITALS	1
Section 1.1. <u>The Declarant</u>	1
Section 1.2. <u>The Property</u>	1
Section 1.3. <u>The Development</u>	1
Section 1.4. <u>The Community</u>	2
Section 1.5. <u>The Name of the Community</u>	2
Section 1.6. <u>The Name of the Association</u>	2
Section 1.7. <u>The Condominium Map</u>	2
Section 1.8. <u>Maximum Number of Units</u>	2
Section 1.9. <u>Master Declaration</u>	2
Section 1.10. <u>Master Association</u>	3
Section 1.11. <u>The Purpose</u>	3
 ARTICLE II - DEFINITIONS	 3
Section 2.1. <u>Property</u>	3
Section 2.2. <u>Condominium Map</u>	3
Section 2.3. <u>Unit</u>	3
Section 2.4. <u>Owner</u>	3
Section 2.5. <u>Association</u>	3
Section 2.6. <u>Executive Board</u>	3
Section 2.7. <u>Master Association</u>	3
Section 2.8. <u>Master Declaration</u>	4
Section 2.9. <u>WTCRB</u>	4
Section 2.10. <u>Mortgage</u>	4
Section 2.11. <u>Mortgagee</u>	4
Section 2.12. <u>Common Expenses</u>	4
Section 2.13. <u>Common Elements</u>	4
Section 2.14. <u>Limited Common Elements</u>	4
Section 2.15. <u>General Common Elements</u>	4

Section 2.16. <u>Community</u>	4
Section 2.17. <u>Commercial Units</u>	4
Section 2.18. <u>Residential Loft Units</u>	5
Section 2.19 <u>Telecommunications Unit</u>	5
Section 2.20. <u>Parking Space Units</u>	5
Section 2.21. <u>Storage Space Units</u>	5
 ARTICLE III - CONDOMINIUM OWNERSHIP	5
Section 3.1. <u>Separate Interests</u>	5
Section 3.2. <u>Title</u>	5
Section 3.3. <u>Enjoyment of Common Elements</u>	6
Section 3.4. <u>Inseparability</u>	6
Section 3.5. <u>No Partition</u>	6
Section 3.6. <u>Separate Titles and Taxation</u>	6
Section 3.7. <u>Mechanic's Lien Rights</u>	7
Section 3.8. <u>Description of Units</u>	7
 ARTICLE IV - EASEMENTS; ENCROACHMENTS	7
Section 4.1. <u>Condominium Map Dedications</u>	7
Section 4.2. <u>Enjoyment and Access</u>	7
Section 4.3. <u>Utilities</u>	8
Section 4.4. <u>Maintenance Easement</u>	8
Section 4.5. <u>Sign and Awning Easements</u>	8
Section 4.6. <u>Ventilation Chase Easements (Exhaust and Make-Up Air)</u>	8
Section 4.7. <u>Encroachments</u>	9
Section 4.8. <u>Constructive Grant of Reciprocal Easements</u>	9
 ARTICLE V - BOUNDARIES AND COMMON ELEMENTS	9
Section 5.1. <u>Unit Boundaries</u>	9
Section 5.2. <u>Allocation of Limited Common Elements</u>	10
Section 5.3. <u>Reallocation of Limited Common Elements</u>	12
 ARTICLE VI - MAINTENANCE AND REPAIRS	12

Section 6.1. <u>Owner's Duties - Units and Limited Common Elements</u>	12
Section 6.2. <u>Association's Duties - Common Elements</u>	13
Section 6.3. <u>Maintenance Costs - Common Elements</u>	13
Section 6.4. <u>Parking Spaces</u>	13
Section 6.5. <u>Association's Right of Access</u>	14
Section 6.6. <u>Snow Removal</u>	14
Section 6.7. <u>Owner Caused Damage</u>	15
Section 6.8. <u>Association's Right to Maintain</u>	15
Section 6.9. <u>Declarant's Right to Maintain</u>	15
Section 6.10. <u>Landscaping and Lawn Care</u>	15
Section 6.11. <u>Owner Responsibility</u>	15
Section 6.12. <u>Determination of Obligation and Supervision</u>	16
 ARTICLE VII - THE ASSOCIATION	16
Section 7.1. <u>Purposes and Powers</u>	16
Section 7.2. <u>Membership</u>	16
Section 7.3. <u>The Executive Board; Representation on Board</u>	16
Section 7.4. <u>Bylaws and Articles</u>	17
Section 7.5. <u>Voting</u>	17
Section 7.6. <u>Exercise of Powers</u>	17
Section 7.7. <u>Membership in Master Association</u>	17
Section 7.8. <u>Assessments</u>	18
Section 7.9. <u>Allocation of Assessments for Common Expenses</u>	19
Section 7.10. <u>Grease Traps; Heated Sidewalks</u>	20
Section 7.11. <u>Payment of Assessments</u>	20
Section 7.12. <u>Periodic Assessments</u>	20
Section 7.13. <u>Added Charges</u>	21
Section 7.14. <u>Collection of Assessments</u>	21
Section 7.15. <u>Assessment Liens</u>	21
Section 7.16. <u>Budgets to be Approved by the Members</u>	21
Section 7.17. <u>Audits</u>	22
Section 7.18. <u>Rules and Regulations</u>	22

ARTICLE VIII- ARCHITECTURAL CONTROL - DESIGN REVIEW BOARD	22
Section 8.1. <u>Design Controls</u>	22
Section 8.2. <u>Alterations</u>	23
Section 8.3. <u>Variances</u>	23
Section 8.4. <u>No Waiver</u>	24
Section 8.5. <u>Non-Liability</u>	24
Section 8.6. <u>Maintain Building Plans; Compliance</u>	24
 ARTICLE IX - ALLOCATED INTERESTS	 24
Section 9.1. <u>Common Elements</u>	24
Section 9.2. <u>Liability For Common Expenses</u>	25
Section 9.3. <u>Voting Rights</u>	25
Section 9.4. <u>Allocation of Interests</u>	25
Section 9.5. <u>Reallocation Upon Declarant's Exercise of Declarant's Exercise of Development Rights to Subdivide</u>	25
Section 9.6. <u>Combining Units</u>	26
Section 9.7. <u>Units Unchanged</u>	26
 ARTICLE X - DECLARANT'S RESERVED DEVELOPMENT RIGHTS	 26
Section 10.1. <u>Rights Reserved</u>	26
Section 10.2. <u>Exercise of Development Rights</u>	28
Section 10.3. <u>Reserved Construction Easement</u>	28
Section 10.4. <u>Signs and Marketing</u>	29
Section 10.5. <u>Removal of Declarant's Property</u>	29
Section 10.6. <u>No Interference</u>	29
Section 10.7. <u>Promotional Activity of the Declarant</u>	29
Section 10.8. <u>Time Limit</u>	29
Section 10.9. <u>Release or Assignment of Declarant's Rights</u> ..	29
Section 10.10. <u>Controlling Authority</u>	30

ARTICLE XI - DECLARANT'S RIGHTS TO CONTROL THE ASSOCIATION AND LIMITATIONS	30
Section 11.1. <u>This Article Controls</u>	30
Section 11.2. <u>Period of Declarant Control</u>	30
Section 11.3. <u>Voluntary Surrender</u>	31
Section 11.4. <u>Association's Records</u>	31
ARTICLE XII - USE RESTRICTIONS	31
Section 12.1. <u>Master Covenants</u>	31
Section 12.2. <u>Leases</u>	31
Section 12.3. <u>Animals</u>	32
Section 12.4. <u>Vehicle Repairs</u>	32
Section 12.5. <u>No Junk Vehicles</u>	32
Section 12.6. <u>Restrictions on Floor Loads</u>	32
Section 12.7. <u>Signs</u>	32
Section 12.8. <u>No Nuisance or Hazard</u>	33
Section 12.9. <u>Use of Commercial Units</u>	33
Section 12.10. <u>Use of Residential Loft Units</u>	34
Section 12.11. <u>Use of Telecommunications Unit</u>	35
Section 12.12. <u>Use of Parking Space Units</u>	35
Section 12.13. <u>Use of Storage Space Units</u>	35
ARTICLE XIII - INSURANCE	36
Section 13.1. <u>Association to Maintain Insurance</u>	36
Section 13.2. <u>Non-Availability</u>	37
Section 13.3. <u>Additional Coverage Required</u>	37
Section 13.4. <u>Adjustment of Property Loss</u>	38
Section 13.5. <u>Procedures; Deductibles; Assessments</u>	38
Section 13.6. <u>Owner's Insurance</u>	38
Section 13.7. <u>Officers and Directors</u>	38
Section 13.8. <u>Fidelity Bonds and Insurance</u>	38
Section 13.9. <u>Managing Agent Insurance</u>	39

Section 13.10. <u>Worker's Compensation and Employer's Liability Insurance</u>	39
Section 13.11. <u>Other Insurance</u>	39
Section 13.12. <u>Insurance Expense</u>	39
Section 13.13. <u>Annual Review</u>	39
Section 13.14. <u>Duty to Repair</u>	39
 ARTICLE XIV - ASSESSMENT CERTIFICATES AND NOTICES 40	
Section 14.1. <u>Assessment Certificates</u>	40
Section 14.2. <u>Notice of Assessment Liens</u>	40
 ARTICLE XV - GENERAL PROVISIONS	
Section 15.1. <u>Notices to Owners</u>	40
Section 15.2. <u>Recording Data</u>	40
Section 15.3. <u>Easement Rights</u>	41
Section 15.4. <u>Covenants to Run with the Land</u>	41
Section 15.5. <u>Enforcement</u>	41
Section 15.6. <u>Amendments</u>	41
Section 15.7. <u>Termination of Declaration</u>	42
Section 15.8. <u>Restoration</u>	42
Section 15.9. <u>Duration</u>	42
Section 15.10. <u>Interpretation and Conflicts</u>	42
Section 15.11. <u>Severability</u>	43

CONDOMINIUM DECLARATION

FOR

TRIANGLE PARK LOFTS

(Basalt, Colorado)

KNOW ALL MEN BY THESE PRESENTS that Triangle Park Lofts LLC, does hereby declare and adopt the following Condominium Declaration (the "Declaration"), which shall run with the land and be binding upon all parties acquiring any interest therein or thereto.

ARTICLE I - RECITALS

Section 1.1. The Declarant. Triangle Park Lofts LLC (the "Declarant") is a limited liability company duly organized and existing under and by virtue of the laws of the State of Colorado.

Section 1.2. The Property. The real property submitted to this Declaration is owned by the Declarant, is located in the Town of Basalt, County of Eagle, State of Colorado, and is described, as follows:

BLOCK 5, ACCORDING TO THE FINAL PLAT OF
WILLITS TOWN CENTER, FILING NO. 5,
RECORDED AS RECEPTION NO. 917692 OF THE
EAGLE COUNTY, COLORADO RECORDS.

(the "Property")

Section 1.3. The Development. The Property shall be developed as a mixed-use condominium project, including three (3) 3-story buildings, consisting of Commercial Units on the ground floor, a Telecommunications Unit below grade, Residential Loft Units on the second and third floors and below-grade parking and Parking Space Units.

Section 1.4. The Community. The Development shall constitute a common interest community within the meaning of the Colorado Common Interest Ownership Act (the "Act"). The Development will constitute a "condominium," within the meaning of the Act. The Development shall be located, in its entirety, within Eagle County, Colorado.

Section 1.5. The Name of the Community. The name of the common interest community is TRIANGLE PARK LOFTS.

Section 1.6. The Name of the Association. The name of the Association that shall manage the Community in accordance with the provisions of this Declaration and the Act is TRIANGLE PARK LOFTS OWNERS ASSOCIATION.

Section 1.7. The Condominium Map. The Development is depicted on the Condominium Map of Triangle Park Lofts, recorded as Reception No. _____ of the Eagle County, Colorado records.

Section 1.8. Maximum Number of Units. The Community shall initially include forty-two (42) Residential Loft Units and thirteen (13) Commercial Units, one (1) Telecommunications Unit, ten (10) Parking Space Units and five (5) Storage Space Units. Declarant reserves the right to create up to a maximum of fifty (50) Residential Loft Units, twenty-eight (28) Commercial Units, twenty-five (25) Parking Space Units and ten (10) Storage Space Units. Declarant reserves the right to subdivide and successively resubdivide any Unit; provided that, the maximum number of each type of Unit shall not exceed the maximum number for that type of Unit stated above and, provided further, the below-grade Telecommunications Unit, the Parking Space Units and the Storage Space Units shall not be further subdivided. All Commercial Units shall be confined to the ground floor and all Residential Loft Units shall be confined to the upper levels of the buildings. The Telecommunications Unit and all Parking Space Units shall be located below grade.

Section 1.9. Master Declaration. The Property is subject to the Willits Town Center Declaration of Covenants and Restrictions recorded as Reception No. 763045 of the Eagle County, Colorado records. The provisions thereof are incorporated herein by this reference.

Section 1.4. The Community. The Development shall constitute a common interest community within the meaning of the Colorado Common Interest Ownership Act (the "Act"). The Development will constitute a "condominium," within the meaning of the Act. The Development shall be located, in its entirety, within Eagle County, Colorado.

Section 1.5. The Name of the Community. The name of the common interest community is TRIANGLE PARK LOFTS.

Section 1.6. The Name of the Association. The name of the Association that shall manage the Community in accordance with the provisions of this Declaration and the Act is TRIANGLE PARK LOFTS OWNERS ASSOCIATION.

Section 1.7. The Condominium Map. The Development is depicted on the Condominium Map of Triangle Park Lofts, recorded as Reception No. 200627627 of the Eagle County, Colorado records. *Recorded October 10, 2006*

Section 1.8. Maximum Number of Units. The Community shall initially include forty-two (42) Residential Loft Units and nine (9) Commercial Units, one (1) Telecommunications Unit, ten (10) Parking Space Units and three (3) Storage Space Units. Declarant reserves the right to create up to a maximum of fifty (50) Residential Loft Units, twenty-eight (28) Commercial Units, twenty-five (25) Parking Space Units and ten (10) Storage Space Units. Declarant reserves the right to subdivide and successively resubdivide any Unit; provided that, the maximum number of each type of Unit shall not exceed the maximum number for that type of Unit stated above and, provided further, the below-grade Telecommunications Unit, the Parking Space Units and the Storage Space Units shall not be further subdivided. All Commercial Units shall be confined to the ground floor and all Residential Loft Units shall be confined to the upper levels of the buildings. The Telecommunications Unit and all Parking Space Units shall be located below grade.

Section 1.9. Master Declaration. The Property is subject to the Willits Town Center Declaration of Covenants and Restrictions recorded as Reception No. 763045 of the Eagle County, Colorado records. The provisions thereof are incorporated herein by this reference.

Section 1.10. Master Association. The Master Declaration (Reception No. 763045) is administered by Willits Town Center, Inc., a Colorado corporation, not for profit, which serves as the Master Association governing the Willits Town Center Planned Unit Development.

Section 1.11. The Purpose. The purpose of this Declaration is to further the interests of the Community, to protect and enhance the property values, to set forth Declarant's reserved development rights and to otherwise effectuate the terms and provisions of the Act.

ARTICLE II - DEFINITIONS

The following terms shall have the following meanings when used herein unless the context otherwise requires:

Section 2.1. Property. "Property" means the property described in **Section 1.2.** above, all of which is submitted to this Declaration.

Section 2.2. Condominium Map. "Condominium Map" means the Condominium Map of Triangle Park Lofts, referenced in **Section 1.7.** above.

Section 2.3. Unit. "Unit" means a physical portion of the Property designated for separate ownership and shall refer to any of the numbered Units shown on the Condominium Map, as the same may be amended from time to time.

Section 2.4. Owner. "Owner" or "Unit Owner" means and refers to any person or entity, including the Declarant, at any time owning a Unit.

Section 2.5. Association. "Association" means and refers to TRIANGLE PARK LOFTS OWNERS ASSOCIATION, a Colorado corporation not for profit.

Section 2.6. Executive Board. "Executive Board" means the Executive Board of the Association.

Section 2.7. Master Association. "Master Association" means Willits Town Center, Inc., the association established pursuant to the Master Declaration.

Section 2.8. Master Declaration. “Master Declaration” means the Declaration of Covenants and Restrictions for Willits Town Center recorded as Reception No. 763045 of the Eagle County, Colorado records.

Section 2.9. WTCRB. “WTCRB” means the Willits Town Center Review Board established pursuant to the provisions of the Master Declaration.

Section 2.10. Mortgage. “Mortgage” means and refers to any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

Section 2.11. Mortgagee. “Mortgagee” means and refers to any person or entity named as a mortgagee or beneficiary under any deed of trust or mortgage under which the interest of any Owner is encumbered.

Section 2.12. Common Expenses. “Common Expenses” means and refers to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

Section 2.13. Common Elements. “Common Elements” means and includes all parts of the Property, grounds, improvements, installations and facilities which are not included within a Unit.

Section 2.14. Limited Common Elements. “Limited Common Elements” means that portion of the Common Elements allocated by the Declaration or the Condominium Map for the exclusive use of one or more, but fewer than all of the Units.

Section 2.15. General Common Elements. “General Common Elements” means the Common Elements exclusive of the Limited Common Elements.

Section 2.16. Community. “Community” means and includes all the Property submitted to this Declaration.

Section 2.17. Commercial Units. “Commercial Units” means and includes all the Units located on the main floor (ground level) of a building.

Section 2.18. Residential Loft Units. “Residential Loft Units” means and includes all of the Units located above the main floor on the two (2) upper levels (the second and third floors) of a building.

Section 2.19. Telecommunications Unit. “Telecommunications Unit” means the non-habitable Unit located below grade designated “Telecommunications Unit” on the Condominium Map.

Section 2.20. Parking Space Units. “Parking Space Units” means and includes only those parking spaces located below grade which are specifically designated as a Parking Space Unit on the Condominium Map. No parking space shown on the Condominium Map shall be considered a “Parking Space Unit” unless specifically so designated on the Condominium Map. After the period of Declarant control, a Parking Space Unit may be owned only by the owner of a Residential Loft Unit or the owner of a Commercial Unit.

Section 2.21. Storage Space Units. “Storage Space Units” means and includes only those storage spaces located below grade which are specifically designated as a Storage Space Unit on the Condominium Map. No storage space shown on the Condominium Map shall be considered a “Storage Space Unit” unless specifically so designated on the Condominium Map. After the period of Declarant control, a Storage Space Unit may be owned only by the owner of a Residential Loft Unit or the owner of a Commercial Unit.

ARTICLE III - CONDOMINIUM OWNERSHIP

Section 3.1. Separate Interests. The Property shown on the Condominium Map is hereby divided into Common Elements and separate fee simple interests in the individual Units depicted thereon. The ownership of a Unit includes and is subject to the easements, rights, and obligations created by this Declaration and the Bylaws of the Association.

Section 3.2. Title. Title to a Unit may be held or owned by any person or entity in any manner by which title to any other real property may be held or owned in the State of Colorado; provided that, title to a Parking Space Unit may be held or owned only by the owner of a Residential Loft Unit or the owner of a Commercial Unit. Notwithstanding anything contained in this Declaration to the contrary, the

conveyance of a Parking Space Unit to any party other than an owner of a Residential Loft Unit or Commercial Unit, shall be void *ab initio*.

Section 3.3. Enjoyment of Common Elements. Subject to the limitations contained in this Declaration, every Owner shall have the nonexclusive right to use and enjoy the General Common Elements and the exclusive right to use and enjoy those Limited Common Elements designated by the Condominium Map or this Declaration as appurtenant to his Unit. Limited Common Elements designated by the Condominium Map or this Declaration as appurtenant to more than one, but fewer than all of the Units shall vest each of the Units so designated with the non-exclusive right to use and enjoy those Limited Common Elements.

Section 3.4. Inseparability. Every conveyance, transfer, gift, devise, encumbrance, or other disposition of a Unit, or any part thereof (other than an undivided interest in the whole), shall be presumed to be a conveyance, transfer, gift, devise, encumbrance, or disposition, as the case may be, of the entire Unit, together with all appurtenant rights created by this Declaration. No part of a Unit or of the legal rights appurtenant thereto may be separated from any other part thereof.

Section 3.5. No Partition. No Owner may bring any action for partition of the Common Elements.

Section 3.6. Separate Titles and Taxation. Each Unit, together with its interest in the Common Elements, constitutes for all purposes a separate parcel of real estate and must be separately assessed and taxed. The value of the Common Elements shall be assessed proportionately to each Unit in accordance with such Unit's allocated interest in the Common Elements. The Common Elements shall not be separately taxed or assessed. Upon the filing for recordation of this Declaration and the Condominium Map, the Declarant shall deliver a copy of such filing to the Assessor of Eagle County, Colorado. Thereafter, all taxes, assessments, and other charges of the State, or any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each Unit, each of which shall be carried on the tax roles as a separate and distinct parcel for that purpose. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title of the other Units.

Section 3.7. Mechanic's Lien Rights. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of an Owner, his agent, or subcontractor shall create any Mechanic's Lien or right to file a statement of Mechanic's Lien against the Unit of any other Owner, or against any interest in the Common Elements.

Section 3.8. Description of Units. Every deed for the conveyance of a Unit and every other instrument affecting title to a Unit shall identify the County in which the Unit is located and may describe that Unit by the number shown on the Condominium Map with appropriate reference to the Condominium Map and to this Declaration, as each shall appear in the records of Eagle County, Colorado, in the following fashion:

UNIT _____,
TRIANGLE PARK LOFTS,
according to the Condominium
Map recorded as Reception No. _____
and the Condominium Declaration
recorded as Reception No. _____
of the Eagle County, Colorado, records.

The numbering sequence for Residential Loft Units shall be preceded by the letter "R", for Commercial Units by the letter "C", for Parking Space Units by the letter "P" and for Storage Space Units by the letter "S". The Telecommunications Unit shall be designated "Unit T-01".

ARTICLE IV - EASEMENTS; ENCROACHMENTS

Section 4.1. Condominium Map Dedications. All dedicated easements shown on the Condominium Map or provided herein are hereby dedicated or reserved for the purposes intended.

Section 4.2. Enjoyment and Access. Every Owner shall have a non-exclusive right and an easement appurtenant to his Unit for the enjoyment and use of the Common Elements and for access to his Unit and the Limited Common Elements appurtenant to his Unit, including an easement for ingress and egress for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes as the same may

from time to time exist upon the Common Elements and for pedestrian and vehicle traffic over, through, and across such roads, drives and parking areas as may, from time to time, be paved and intended for such purposes.

Section 4.3. Utilities. The Property shall be subject to a blanket easement in favor of the Association over, across, and through the Common Elements to install, repair, replace, and maintain all utilities, including, without limitation, water, sewer, gas, telephone, electricity, telecommunications and internet services and cable TV (“utility service lines”). The Units themselves shall be subject to easements in favor of the Association to maintain, repair, replace or reconstitute common utility service lines, fixtures, equipment and facilities serving the Units and/or the Common Elements.

Section 4.4. Maintenance Easement. The Common Elements, and to the extent necessary, the Units themselves, shall be subject to a non-exclusive right and easement in the Association, including its agents, employees, contractors, and subcontractors, as may be necessary or appropriate for maintenance and repairs and the performance of such other duties and functions as the Association is permitted or obligated to perform under this Declaration.

Section 4.5. Sign and Awning Easements. Each Commercial Unit shall carry an easement for signs and awnings (which signs and awnings shall remain the personal property of the owner of the Unit) over that portion of the Common Elements which constitute the exterior surfaces which bound the Unit. The location, size, number and appearance of any such signs and awnings shall be subject to the approval of the WTCRB and the laws, rules and regulations of the Town of Basalt.

Section 4.6. Ventilation Chase Easements (Exhaust and Make-Up Air). Those Commercial Units located within twenty-five (25) feet of any existing ventilation chase forming a part of the General Common Elements shall carry an easement to access, connect to and use such existing ventilation chase for exhaust and make-up air handling purposes, provided that, the Owner shall obtain all necessary permits and licenses, shall comply with all applicable laws, rules, regulations and codes, the connection shall not interfere with any easement or the structural integrity of any part of the Common Elements or impair any pre-existing use of the ventilation chase. Prior to any such connection, appropriate plans and specifications shall be submitted

to the Association. No such connection shall be made without the prior written approval of the Association, which approval shall not be unreasonably withheld.

Section 4.7. Encroachments. If a Unit shall encroach upon any other Unit by reason of original construction or by the non-purposeful or non-negligent act of the Owner, then an easement appurtenant to such encroaching Unit, to the extent of such encroachment, shall exist so long as such encroachment shall exist. If any Common Element shall encroach upon any Unit by reason of original construction, or the non-purposeful or non-negligent act of the Association, then an easement appurtenant to such Common Element to the extent of such encroachment shall exist so long as such encroachment shall exist.

Section 4.8. Constructive Grant of Reciprocal Easements. All conveyances of Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to the preceding **Sections of this Article**, even though no specific reference to such easements appear in the conveyance. Such easements and covenants are intended and hereby are declared to run with the land and to be appurtenant to the respective Units, and each of them.

ARTICLE V - BOUNDARIES AND COMMON ELEMENTS

Section 5.1. Unit Boundaries. The boundaries of each Unit are shown on the Condominium Map. Unit boundaries of Residential Loft Units and Commercial Units consist of the unfinished walls, floors and ceilings provided that:

(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 Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements.

(b) If any chute, flue, duct, wire, cable, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit, serving any other Unit or serving any portion of the Common Elements, is a part of the General Common Elements, EXCEPT THAT heating,

cooling and ventilating systems (“HVAC Systems”) and other equipment, the use of which is limited to Residential Loft Units, are Limited Common Elements allocated to the Residential Loft Units served thereby, and provided further, that HVAC Systems and other equipment, the use of which is limited to Commercial Units are Limited Common Elements allocated to the Commercial Units served thereby.

(c) Subject to the provisions of paragraph (b) of this **Section**, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, terraces, balconies and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

The horizontal boundaries of each Parking Space Unit shall be as shown on the Condominium Map. The finished concrete floor of the parking facility shall form the lower boundary of the Parking Space Unit which shall extend to a vertical height of eight (8) feet, all within the perimeter of the horizontal boundaries shown on the Condominium Map.

Section 5.2. Allocation of Limited Common Elements. In addition to the Limited Common Elements identified in **Sections 5.1(b) and 5.1(d)** above, the following portions of the Common Elements are designated Limited Common Elements and assigned to the Unit or Units so designated:

(a) The lobby on the main floor, including the sitting area, mailroom, exercise room, elevator and elevator shaft, the stairs and stairwell extending from the main floor (ground level) to the upper levels and all upper floor stairways, stairwells, and hallways are designated Limited Common Elements and allocated to the Residential Loft Units served thereby, provided however, that the lobby, elevators, stairs and stairwells shall be subject to a general access easement appurtenant to the Telecommunications Unit and each of the Commercial Units for the limited purpose of maintaining, servicing and repairing Limited Common Elements appurtenant to such Units.

(b) The utility areas, the use of which is limited to Residential Loft Units are designated Limited Common Elements and allocated the Residential Loft Units served thereby.

(c) The utility areas, the use of which is limited to Commercial Units are designated Limited Common Elements and allocated to the Commercial Units served thereby.

(d) The Roof Terrace identified on the Condominium Map is designated a Limited Common Element and allocated to the Residential Loft Units, subject to a general access easement appurtenant to the Telecommunications Unit and each of the Commercial Units for the limited purpose of maintaining, servicing and repairing those areas of the roof specifically designated a Limited Common Element appurtenant to any such Unit.

(e) Any balcony or other terrace designated a Limited Common Element is allocated to the particular Unit designated on the Condominium Map.

(f) Any porch, courtyard or patio designated a Limited Common Element is allocated to the particular Unit or Units designated on the Condominium Map.

(g) Doors and windows, including storm windows and storm doors, are Limited Common Elements allocated to the Unit which they serve.

(h) All guest parking spaces below grade are designated Limited Common Elements and allocated to the Residential Loft Units.

(i) Any parking space designated a Limited Common Element is allocated to the particular Unit designated on the Condominium Map.

(j) The roof space for antennas, receivers, transmitters and all similar manner of equipment and facilities required to accommodate the operation of the Telecommunications Unit is identified on the Condominium Map as a Limited Common Element allocated and appurtenant to Unit T-01. The Telecommunications Unit shall further have an appurtenant easement over the Common Elements to install and maintain communication lines, cables, fiber optics, conduits and other service lines connecting the Unit with such Limited Common

Element (roof space). The installation of any such services lines to be installed in addition to those during the initial construction of the project shall be submitted to and subject to the prior written approval of the Association.

(k) Any storage space designated a Limited Common Element is allocated to the particular Unit designated on the Condominium Map.

(l) Any other portion of the Common Elements, designated a Limited Common Element is allocated to the particular Unit or Units designated on the Condominium Map.

Section 5.3. Reallocation of Limited Common Elements. The Declarant may reallocate the Common Elements, including any Limited Common Element designated as appurtenant to a Unit or Units owned by the Declarant, in the exercise of Declarant's reserved development right to further subdivide a Unit. A Limited Common Element may be reallocated by the Association between or among Units only to the extent permitted and in the manner authorized by the Act. Likewise, a Common Element not previously allocated as a Limited Common Element may be allocated as a Limited Common Element by the Association only to the extent permitted and in the manner authorized by the Act.

ARTICLE VI - MAINTENANCE AND REPAIRS

Section 6.1. Owner's Duties - Units and Limited Common Elements. Each Owner shall be responsible for maintenance and repair of his Unit and all Limited Common Elements (except parking spaces) exclusively serving such Unit, including fixtures and improvements and all utility lines and equipment located within and serving only such Unit. Each Owner shall, at all times, maintain and keep in good condition and repair, his Unit and all Limited Common Elements serving his Unit. In performing such maintenance or repair, or in improving or altering a Unit, an Owner shall obtain all necessary permits and licenses, and shall comply with all applicable laws, rules and regulations, including the Rules and Regulations of the Association. Notwithstanding the foregoing, no Owner shall do any maintenance, repair or improvement work that impairs the structural soundness of the building in which such Owner's Unit is located or that interferes with any easement. No Owner shall change or alter the appearance or the structural integrity of any Limited Common Element without the written permission of the Association. No Owner

shall have the right to make or cause to be made any additions, alterations or repairs to the General Common Elements.

Section 6.2. Association's Duties - Common Elements. The Association shall be responsible for the maintenance and repair of all the Common Elements, except for those Limited Common Elements appurtenant to a single Unit. Without limiting the generality of the foregoing, the Association shall provide lawn, grounds and landscaping care, shall water, trim, prune and winter wrap trees and shrubs, maintain and operate the raw water irrigation system for the benefit of the Community and otherwise maintain and keep in good repair and condition all sidewalks, yards, grounds, greenbelt areas, all drives, all parking lots and facilities, traffic control devices and signage, recreational equipment, if any, and all other improvements and facilities which form a part of the General Common Elements. The Association shall provide for the removal of snow from steps, stairs, walkways, sidewalks, roadways, drives and parking areas which form a part of the General Common Elements. The Association shall provide for the removal of snow and ice from the roofs and gutters, as and when necessary or otherwise advisable. The Association shall maintain the Common Elements to substantially the same or better standards as originally installed.

Section 6.3. Maintenance Costs - Common Elements. The costs of the maintenance, repair and upkeep of the General Common Elements shall be a Common Expense of all the Owners; provided that, any such costs attributable to any Limited Common Element allocated to the Residential Loft Units shall be assessed exclusively to those Residential Loft Units served thereby, and any such costs attributable to any Limited Common Element allocated to the Commercial Units shall be assessed exclusively to those Commercial Units served thereby; and provided further that, the cost of maintenance, repair and upkeep of any of the General Common Elements necessitated by excessive wear or abuse caused by or attributable to the Owner or Owners of one or more of the Units, may by resolution adopted by the Executive Board, be assessed to the Owner or Owners responsible for the excessive wear or abuse in such proportions as the Executive Board reasonably determines to be proper.

Section 6.4. Parking Spaces. Notwithstanding anything herein contained to the contrary, all parking spaces and parking areas (including Parking Space Units and parking spaces designated as Limited Common Elements) shall be maintained

exclusively by the Association. The Association shall keep and maintain the markings and striping which delineates the parking spaces in good condition and repair. The Association shall maintain all parking spaces and parking areas in an uniform manner and all such costs shall be assessed as provided in Section 7.10(d) below.

Section 6.5. Association's Right of Access. The Association shall have the right of access to any Unit, at any time, for the purpose of making emergency repairs necessary to prevent damage to the Common Elements or to another Unit or Units and the right of access to any Unit at reasonable times to perform routine maintenance and repairs upon the Common Elements. The costs of repairing any damage to a Unit resulting from entry therein for the purpose of repairing or maintaining the Common Elements or preventing damage to the Common Elements or another Unit, shall be a Common Expense of all the Owners. The costs of repairing any damage to a Unit resulting from entry therein for the purpose of repairing or maintaining a Limited Common Element shall be charged to the Owner of the Unit or Units served by such Limited Common Element.

Section 6.6. Snow Removal. No Owner of any Unit shall allow any snow or ice to accumulate or remain upon any terrace or balcony located other than on the ground floor, which constitutes a Limited Common Element appurtenant exclusively to his Unit for more than twenty-four (24) hours from the time the latest accumulation of snow has occurred. Should the Owner fail to remove the snow in compliance with the provisions of this Section, the Association shall have the right to access any such terrace or balcony at reasonable hours, through the Unit or otherwise, in order to perform the snow removal function mentioned. The costs of performing the snow removal function by reason of the Owner's neglect or failure to maintain the same, shall be charged to the Owner of the Unit to which the deck or balcony is allocated as a Limited Common Element. The Association may also levy a fine or successive fines in accordance with such Rules and Regulations as the Executive Board may adopt. (The purpose of this provision is to minimize or eliminate the discharge or release of waters from snow melt dripping from the upper terraces or balconies which may damage the Common Elements, pose a hazard by the buildup of ice on walkways below or inconvenience persons passing below).

Section 6.7. Owner Caused Damage. Notwithstanding the foregoing, if damage to the Common Elements or to any Unit is caused by the negligence or intentional act of an Owner or if entry into a Unit is required because of any negligence or intentional act on the part of an Owner, such Owner shall pay, or reimburse the Association, for all costs of repairing such damage and shall be liable to the Association and the other Owners for all additional losses or expenses suffered as a result of his negligence or intentional acts, including without limitation, reasonable attorney's fees.

Section 6.8. Association's Right to Maintain. If in the judgment of the Executive Board, any Owner has failed to keep and maintain his Unit, or any Limited Common Element serving his Unit exclusively, in good condition and repair, the Association may, after thirty (30) days notice to the Owner, perform all work necessary to maintain the Unit or the Limited Common Element in good condition and repair and the Association shall have access to the Unit for such purposes. The Owner shall reimburse the Association for the cost of such work.

Section 6.9. Declarant's Right to Maintain. If, in the judgment of Declarant, the Association has failed to keep and maintain the Common Elements in good condition and repair, the Declarant may, after thirty (30) days notice to the Association, perform all work necessary to maintain the Common Elements in good condition and repair and Declarant shall have access to any Unit and the Common Elements for such purposes. The Association shall reimburse Declarant for the cost of such work, which shall be a Common Expense of all Owners.

Section 6.10. Landscaping and Lawn Care. Any landscaping in addition to that provided by the Declarant in connection with the initial construction of the buildings shall be at the discretion of the Association and subject to the prior approval of the Willits Town Center Review Board ("WTCRB") established under the Master Declaration, which may assess a review fee.

Section 6.11. Owner Responsibility. Any maintenance or repair required by reason of the willful or negligent act of the Owner, members of his family or guests, tenants or occupants of the Owner's Unit, shall be attributed to the Owner and shall be the responsibility and obligation of such Owner. The Association shall have the right to perform any such maintenance or repairs and recover the costs incurred from the Owner responsible.

Section 6.12. Determination of Obligation and Supervision. The responsibility for the performance of any maintenance, repair, lawn care, snow removal or other work not expressly delineated above shall be determined by the Association. In the event any dispute should arise as to the construction or interpretation of the foregoing **Sections**, the determination with regard thereto made by the Association shall be conclusive. The Association shall have the right to prescribe minimum standards with regard to an Owner's performance of any maintenance for which the Owner is responsible. The Owner shall comply with all guidelines and requirements prescribed by the Association in this connection, and in furtherance hereof, the Association shall have the right to require any Owner at any time, to forthwith correct any repair or any maintenance deficiency then existing.

ARTICLE VII - THE ASSOCIATION

Section 7.1. Purposes and Powers. The Association through the Executive Board or a Managing Agent shall perform the functions and hold and manage property as provided in this Declaration so as to further the interests of the Unit Owners in the Project. The Association shall have all the powers necessary or desirable to effectuate such purposes.

Section 7.2. Membership. Every Owner shall be entitled and required to be a member of the Association. An Owner shall be entitled to one (1) membership for each Unit Owner. Each such membership shall be appurtenant to and inseparable from the Unit upon which it is based, and shall be transferred automatically by the transfer (in whatsoever form) of that Unit. Ownership of a Unit shall be the sole qualification for membership. No person or entity other than an Owner may be a member of the Association.

Section 7.3. The Executive Board; Representation on Board. The affairs of the Association shall be managed by an Executive Board which may by resolution delegate any portion of its authority to an Executive Committee or to a Managing Agent for the Association. There shall be no fewer than three members of the Executive Board, during the period of Declarant control. After the period of Declarant control, the Executive Board shall be composed of not less than five, (5), nor more than, seven (7) persons. In the case of a five (5) person Board, at least two (2) Members of the Executive Board shall be elected only from among the Owners

of the Commercial Units or from among candidates nominated and approved by a majority of the Owners of Commercial Units. In the case of a seven (7) person Board, at least three (3) Members of the Executive Board shall be elected only from among the Owners of the Commercial Units or from among candidates nominated and approved by a majority of the Owners of Commercial Units.

Section 7.4. Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may be amplified under the provisions of the Association's Bylaws.

Section 7.5. Voting. Owners of one (1) or more Units shall have the right to cast the aggregate number of votes that the Unit or Units which they own represent. If any Unit is owned by multiple parties, all such parties shall be Members. If only one (1) of the multiple Owners of a Unit is present at a meeting of the Association, such Owner is entitled to cast all the votes allocated to that Unit. If more than one (1) of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement, if any one (1) of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit. In no event shall more votes be cast with respect to any Unit than the total number of votes allocated to that Unit. No vote(s) allocated to a Unit owned by the Association may be cast.

Cumulative voting shall not be permitted in the election of the Executive Board or for any other purpose.

Section 7.6. Exercise of Powers. The Association may exercise any right or privilege given it expressly by this Declaration, by the Act or otherwise by law, and every other right, privilege and power reasonably to be implied from this Declaration or reasonably necessary to effectuate its function and purposes.

Section 7.7. Membership in Master Association. The Association is treated as the Owner of the Property for purposes of the Master Declaration. The Association representing the collective interests of the Owners shall serve as the member of the Master Association, Willits Town Center, Inc. Assessments levied by the Master Association shall be paid by the Association and assessed against the Units as a Common Expense.

Section 7.8. Assessments. The Association shall have the right to levy and make assessments for Common Expenses, in accordance with this Declaration and its Bylaws, for the following purposes:

- (a) To promote the recreation, health, safety, and welfare of the Owners and the residents of the property;
- (b) To pay assessments levied against the Property by the Master Association;
- (c) To pay the costs and expenses of maintaining the Common Elements as set forth in this Declaration;
- (d) To pay the premiums for all insurance which the Association is required or permitted to maintain;
- (e) To pay taxes and special assessments levied against any property of the Association, whether real or personal;
- (f) To provide lawn, grounds and landscaping care for the Common Elements, maintain and operate the raw water irrigation system for the benefit of the Common Elements, and to otherwise maintain the Common Elements;
- (g) To provide for the removal of snow from sidewalks, roadways, driveways, and parking lots which form a part of the Common Elements and from the roofs and gutters as needed;
- (h) To pay all charges for lighting, utilities, irrigation water, trash removal and other services attributable to the Common Elements;
- (i) To pay wages for Association employees, Association management expenses, legal and accounting fees;
- (j) To pay any deficit remaining from any previous assessment period;
- (k) To create a reasonable contingency reserve, surplus and/or sinking fund;

(l) To pay any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration, its Articles of Incorporation or Bylaws or the Act; and

(m) For any other purpose permitted by the Act.

Section 7.9. Allocation of Assessments for Common Expenses. Each Owner shall pay his prorata share of the Common Expenses. Such proration shall be made on the basis of each Owner's allocated interest in the Common Elements, except as follows:

(a) Any heating, cooling and ventilation system (HVAC system) serving the Commercial Units shall be metered separately from any HVAC system serving Residential Loft Units. The utility, maintenance and repair costs associated with any HVAC system serving only Residential Loft Units shall be apportioned and assessed among the Residential Loft Units served thereby on a proportionate square foot basis. The utility, maintenance and repair costs associated with any HVAC system serving more than one Commercial Unit shall be apportioned and assessed among the Commercial Units served thereby on a basis weighted to account for reasonably projected differences in usage among the different Units, as from time to time determined and certified by a mechanical engineer or other qualified technician; and

(b) The Association shall allocate expenses that inherently relate only to residential uses only to the Owners of the Residential Loft Units and allocate expenses that inherently relate only to commercial uses only to the Owners of the Commercial Units; and

(c) The utility, maintenance and repair costs associated with any Limited Common Element serving more than one Unit shall be apportioned and assessed among the Units served thereby on a proportionate square foot basis;

(d) The below-grade parking areas, stairwell, stairs and elevator primarily serve the Owners of the Residential Loft Units, their guests and the Owners of the Parking Space Units. All costs to maintain the parking areas, drives and all parking spaces (including the Parking Space Units, guest parking and those parking spaces designated Limited Common Elements) and the stairwell, stairs and the elevator, shall be allocated and assessed as follows: ninety-nine percent (99%) of all such

costs shall be allocated to the Residential Loft Units and one percent (1%) of all such costs shall be allocated to the Parking Space Units; and

(e) All costs to maintain the roof (except those parts which constitute Limited Common Elements appurtenant to the Telecommunications Unit or to a particular Commercial Unit or Units) shall be allocated to the Residential Loft Units; and

(f) As a part of its maintenance duties, the Association shall periodically clean fireplace flues and the clothes dryer exhaust vents. Such elements serve the Residential Units exclusively and the Association shall allocate those expenses to the Residential Loft Units; and

(g) Nothing contained herein shall prohibit certain Common Expenses from being apportioned to a particular Unit or Units as provided elsewhere in this Declaration.

Section 7.10. Grease Trap; Heated Sidewalks. Any grease trap or cleanout under or within a public sidewalk or other public right-of-way shall be maintained at the sole cost and expense of the Commercial Unit Owner or Owners utilizing the same. Such Owner(s) shall indemnify and hold the Association and all other Members of the Association harmless from any costs or liabilities in connection therewith. All maintenance and energy costs associated with maintaining snow melt facilities within or under the public sidewalks and drives adjacent to the Building shall be assessed as a Common Expense and each Owner shall pay his prorata share of any and all such costs.

Section 7.11. Payment of Assessments. Each Owner shall pay to the Association, in accordance with its Bylaws, such assessments as may be periodically made by the Association. Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses.

Section 7.12. Periodic Assessments. After any assessment has been made by the Association, assessments shall thereafter be made monthly or on such other periodic basis as the Executive Board shall determine, but no less frequently than annually, and shall be based on a budget adopted no less frequently than annually.

Section 7.13. Added Charges. The Association may impose charges for late payment of assessments, recover reasonable attorney's fees and other costs of collection and levy fines for violations of the Declaration, the Bylaws or the Rules and Regulations of the Association. All such charges shall be enforceable as assessments. Any assessment or portion thereof which is not paid when due shall bear interest from and after the date the same becomes due at the rate of eight percent (8%) per annum or at such greater rate as may be established by the Executive Board, but not exceeding twenty-one percent (21%) per year.

Section 7.14. Collection of Assessments. The Association shall have the right to bring an action at law against the Owner personally obligated to pay any delinquent assessment or fines.

Section 7.15. Assessment Liens. The Association shall also have a statutory lien on any Unit for any assessment levied against that Unit or fines imposed against the Unit Owner. The amount of the lien shall include any fees, charges, late charges, attorney's fees, fines and interest. This Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or assessment is required. The statutory lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments become due. The Association's lien for assessments and enforcement rights in respect thereto shall be governed by the applicable provisions of the Act, as now in effect or hereafter amended.

Section 7.16. Budgets to be Approved by the Members. It shall be the duty of the Executive Board to formulate and propose a budget of expenses, not less frequently than annually. Within ninety (90) days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider the budget. Such meeting shall occur within forty-five (45) days after mailing or other delivery of the summary. The Executive Board shall give notice to the Unit Owners of the meeting in accordance with the Bylaws. The budget proposed by the Executive Board shall not require approval from the Unit Owners and it will be deemed approved by the Unit Owners in the absence of a veto at the noticed meeting by a majority of all Unit Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by

the Executive Board and not vetoed by the Unit Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Unit Owners.

Section 7.17. Audits. The books and records of the Association shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, at least once every two (2) years by a person selected by the Executive Board. Such person need not be a certified public accountant except in the case of an audit.

An audit shall be required under this Section only when both of the following conditions are met:

- (a) The Association has annual revenues or expenditures of at least Two Hundred Fifty Thousand Dollars (\$250,000); and
- (b) An audit is requested by the Owners of at least one-third (1/3) of the Units represented by the Association.

Copies of an audit or review under this Section shall be made available upon request to any Unit Owner beginning no later than thirty (30) days after its completion.

Section 7.18. Rules and Regulations. In furtherance of the intent, purposes and provisions of this Declaration, rules and regulations may be adopted, amended or repealed from time to time by the Executive Board. All rules and regulations adopted by the Association shall be applied uniformly in a non-discriminatory manner. The Executive Board may also establish and enforce penalties and fines for the infraction of any rule or regulation, which fines shall be collectable as assessments in the manner provided above.

ARTICLE VIII- ARCHITECTURAL CONTROL - DESIGN REVIEW BOARD

Section 8.1. Design Controls. An Architectural Review Committee, known as the Willits Town Center Review Board ("WTCRB"), is established under the provisions of the Master Declaration, i.e., the Declaration of Covenants, Conditions and Restrictions for Willits Town Center, recorded as Reception No. 763045 of the

Eagle County, Colorado records. Overall architectural and design controls set forth in the Master Declaration apply. The requirements and procedures set forth in this Article are in addition to any and all procedures and requirements that may apply under the Master Declaration.

Section 8.2. Alterations. No structural alterations to the interior of a Unit nor any alteration of the Common Elements, including but not limited to, painting or staining of exterior siding, shall be undertaken unless the complete plans and specifications have been first submitted to and approved in writing by the Executive Board. Upon the review of any plans, specifications or submittals, the Executive Board may require that the Applicant(s) reimburse the Association for any actual expense incurred with engineers, architects, attorneys or other professionals in reviewing such plans and specifications. The Executive Board shall not arbitrarily refuse to permit an Owner to make reasonable modifications to that Owner's Unit or a Limited Common Element appurtenant to the Owner's Unit, if such modification is deemed necessary under the Americans With Disabilities Act or other Federal, State or local law, ordinance or regulation. Decisions concerning the approval or denial of a Unit Owner's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in duly adopted rules and regulations or Bylaws of the Association, and shall not be made arbitrarily or capriciously.

Section 8.3. Variances. The Executive Board may grant reasonable variances or adjustments from any design standards or guidelines or from any conditions or restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising from the application of the same. Such variances or adjustments shall be granted only when not materially detrimental or injurious to other Units or the Common Elements. No such variance shall deviate substantially from the general intent and purpose of this Declaration. Any variance shall be deemed unique and shall not constitute a precedent for the future. The Executive Board may impose special conditions or requirements in connection with the grant of any variance. A variance may be granted by a majority vote of the Executive Board, provided always, that no variance shall be permitted to allow any change to any structure that would be inconsistent with the provisions of paragraph 5.c., Town of Basalt, Colorado TCR Certificate No. 2, Series of 2005, recorded as Reception No. 917690 of the Eagle County, Colorado records

Section 8.4. No Waiver. The approval or consent of the Executive Board to any application for design approval shall not be deemed to constitute a waiver of any right to deny approval or consent as to any similar or related application in the future.

Section 8.5. Non-Liability. No review or approval by the Executive Board of any alteration or improvement shall be deemed approval of the alteration or improvement for compliance with building codes or other governmental laws and regulations, nor shall it be deemed approval for safety purposes.

Section 8.6. Maintain Building Plans; Compliance. Notwithstanding anything contained in this Declaration to the contrary, the Association and all Unit Owners shall strictly adhere to letter and spirit of the provisions of paragraph 5.c., Town of Basalt, Colorado TCR Certificate No. 2, Series of 2005, recorded as Reception No. 917690 of the Eagle County, Colorado records, the terms of which are incorporated herein by this reference. No variance shall be granted and no change to any structure shall be allowed in derogation thereof.

ARTICLE IX - ALLOCATED INTERESTS

Section 9.1. Common Elements. A 99.00% interest in the Common Elements is deemed allocable to the Residential Loft Units and the Commercial Units combined. A 0.40% interest in the Common Elements is deemed allocable to the Telecommunications Unit. A 0.60% interest in the Common Elements is deemed allocable to the Parking Space Units and the Storage Space Units combined. The undivided interest in the Common Elements allocable to each Unit is determined in the following manner:

(a) The 99.00% interest in the Common Elements allocable to the Residential Loft Units and the Commercial Units as a group, is allocated among those Units on a proportionate square foot basis. The undivided percentage interest in the Common Elements of each such Unit is accordingly determined by multiplying the 99.00% share by a fraction, the numerator of which is the square footage of the floor area contained within the Unit and the denominator of which is the square footage of the floor area contained in all the Residential Loft Units and all the Commercial Units, combined.

In each case, the resulting percentage interest is rounded to the nearest one-hundredth (1/100th) of a percentage point, provided however, in order for the sum of the percentage interests in the Common Elements to equal one hundred percent (100%), the rounding necessary to express a Unit's percentage interest may include the rounding of a fractional percentage point to either the next higher or the next lower one hundredth (1/100th) of a percentage point, regardless of which is nearest

(b) A 0.40% interest in the Common Elements is allocated to the Telecommunications Unit.

(c) The Parking Space Units and the Storage Space Units are each deemed to carry equivalent interests in the Common Elements. The 0.60% interest in the Common Elements allocable to the Parking Space Units and the Storage Space Units as a group is allocated among the Parking Space Units and the Storage Space Units on an equal basis. Accordingly, each Parking Space Unit is allocated an undivided 0.04% interest in the Common Elements and each Storage Space Unit is allocated a 0.04% interest in the Common Elements.

Section 9.2. Liability For Common Expenses. Except as otherwise provided in **Article VII** above, each Unit's share of liability for Common Expenses shall be in the same percentage as that Unit's percentage interest in the Common Elements.

Section 9.3. Voting Rights. The aggregate number of votes authorized and allocated among the Units shall total two thousand five hundred (2,500) votes. The number of votes allocated to each Unit is determined by multiplying the Unit's percentage interest in the Common Elements by two thousand five hundred (2,500) and rounding that product to the nearest whole number.

Section 9.4. Allocation of Interests. With reference to the foregoing criteria, the interests of each Unit have been determined and are hereby allocated as provided in the Allocated Interests Table attached. The allocation of interests reflected in the Table attached shall be deemed binding and conclusive, subject however, to the provisions of **Section 9.5., Section 9.6. and Article X** below.

Section 9.5. Reallocation Upon Declarant's Exercise of Development Right To Subdivide. In the exercise of its reserved development rights, if the Declarant subdivides a Unit into two (2) or more Units, whether or not any part of the Unit is converted into Common Elements, the Declarant shall prepare, execute and record

the requisite supplements or amendments to this Declaration and the Condominium Map and assign a identifying number to each new Unit created. Any such supplement or amendment to this Declaration shall reallocate all of the allocated interests of the Unit so subdivided among the Units created by the subdivision in the manner described above or in such other reasonable manner as the Declarant may prescribe. No such subdivision or reallocation of the allocated interests in the Unit subdivided shall change the allocated interests of any Unit which is not then owned by the Declarant or cause the number of Units within the Community to exceed the maximum number of Units indicated in **Section 1.8.** above.

Section 9.6. Combining Units. An Owner may combine two (2) or more contiguous Units of the same type (Residential or Commercial) into one (1) Unit. If an Owner combines two or more Units with the intent of creating one (1) Unit therefrom, such resulting Unit shall continue to have the full allocated interests and voting rights originally assigned to the Units so combined. The structural separations between such Units shall become Limited Common Elements appurtenant to the combined Unit. The Owner of a combined Unit shall have the right to separate the Unit back into its constituent Units as previously constituted and thereupon restore the interests and Limited and General Common Elements appurtenant to each Unit as existing prior to their combination. Before any combination or separation of Units, the Owner shall submit such plans, specifications and information to the Executive Board as it shall reasonably require, and shall pay all expenses of the Association incurred in connection with such action, including without limitation, the cost of preparing and recording a Supplemental Declaration and Condominium Map that describe and depict the resulting Units and Common Elements and apportion the Allocated Interests of the affected Units in a manner consistent with the principles set forth in this **Article IX.**

Section 9.7. Units Unchanged. Notwithstanding anything herein contained to the contrary, Parking Space Units, Storage Space Units and the Telecommunications Unit shall not be subdivided or combined.

ARTICLE X - DECLARANT'S RESERVED DEVELOPMENT RIGHTS

Section 10.1. Rights Reserved. The Declarant hereby reserves, to the fullest extent permitted by law, the following development rights and the right to

supplement and amend this Declaration in the exercise of any or all of the following development rights:

(a) The right to construct and complete the Units and Common Elements shown on the Condominium Map, in any sequence and order that the Declarant shall determine;

(b) The right to construct underground utility lines, pipes, wires, ducts conduits and other facilities across any portion of the Property for the purpose of furnishing utilities and other services to the buildings and improvements to be constructed on the Property;

(c) The right to withdraw and grant easements and licenses to public utility companies and to convey improvements within those easements anywhere in the Community not occupied by the buildings for the purposes mentioned;

(d) The right to reconfigure any or all of the Units and construct and complete the Units as reconfigured, together with the Common Elements, provided that the Declarant shall have no right to reconfigure a Unit the Declarant does not own;

(e) The right to subdivide and successively subdivide and convert a Unit previously created into additional Units, Common Elements or both and to reallocate all of the allocated interests of the Unit among the Units created by the subdivision in any reasonable manner, together with the right to construct and complete the additional Units and Common Elements created, in any sequence and order that the Declarant shall determine; provided always that, the number of each type of Unit shall in no event exceed the maximum number of that type of Unit indicated in **Section 1.8.** above.

(f) The right to use so much of the Common Elements as it may deem necessary or convenient for the purpose of the construction and development of the improvements on the Property; provided, however, that such use shall not unreasonably interfere with an Owner's access to his Unit;

(g) To assign or reassign any parking space within the Common Elements, which is not designated as a Limited Common Element or a Parking Space Unit on the Condominium Plat; and

(h) To merge or consolidate the Community with a common interest community of the same form of ownership; and

(i) To exercise the "Special Declarant Rights" defined in the Act, including the rights to construct and complete the improvements, to exercise any development right, including those expressly reserved in this Declaration, to maintain sales offices, management offices, model Units and signs advertising the Development, to use easements through the Common Elements for the purpose of making improvements within the Property and to appoint and to remove any officer of the Association or any Executive Board member during the period of Declarant controls herein set forth.

Section 10.2. Exercise of Development Rights. Any development right may be exercised with respect to different portions of the Property, at different times and in such sequence as the Declarant may determine. No assurances are made as to which portions of the Property may be subjected to the exercise of each development right, or in which order each development right may be exercised or applied to any portion of the Property. If any development right is exercised in any portion of the Property that development right need not be exercised in all or any portion of the remainder of the Property. The exercise of development rights with respect to some portions of the Property will not obligate the Declarant to exercise any development rights as to other portions. No assurances are made by Declarant as to whether Declarant will exercise its development rights herein reserved or any of them or as to the order in which any portion of the Property may be developed.

Section 10.3. Reserved Construction Easement. Declarant reserves the right to perform warranty work, repairs and construction work in the Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and make repairs until completion of the entire project. All work may be performed by the Declarant without the consent or approval of the Executive Board or the Association. The Declarant reserves an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant's rights, whether arising under the Act or reserved in this Declaration. This easement and the reserved rights attendant thereto includes the right to convey access, utility and drainage easements to the Town of Basalt and Midvalley Metropolitan District or

any other special district, governmental authority, public utility or the State of Colorado.

Section 10.4. Signs and Marketing. Declarant reserves the right to post and maintain signs and displays in Units owned by the Declarant and in the Common Elements in order to promote sales of Units. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Unit Owners.

Section 10.5. Removal of Declarant's Property. Declarant reserves the right to remove and retain all of its property and equipment used in the sales, management, construction and maintenance of the property whether or not the same have become fixtures.

Section 10.6. No Interference. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any reserved rights of the Declarant, without the prior written consent of the Declarant.

Section 10.7. Promotional Activity of the Declarant. The Declarant may maintain a sales office or management office within any Unit or Units located on the Property. Any Unit or Units may be used as a model for promotional purposes. The Declarant reserves the right to maintain signs on the Common Elements, so long as the Declarant owns any Unit held for sale within the Community.

Section 10.8. Time Limit. The development rights reserved to the Declarant must be exercised within twenty-five (25) years from the date of this Declaration.

Section 10.9. Release or Assignment of Declarant's Rights. Declarant may release or transfer any or all the Declarant's rights reserved under this Article or elsewhere in this Declaration, but only by instrument acknowledged in the manner of a Deed and recorded in the records of the Clerk and Recorder of Eagle County, Colorado. Declarant may restrict or limit the exercise of any rights and interests so assigned. Any successor in interest to Declarant, in respect to any portion of the Declarant's rights hereunder, may further assign and transfer such rights and interests in like manner, but only to the extent expressly permitted in the assignment from the Declarant.

Section 10.10. Controlling Authority. The provisions of this Article supercede and control all conflicting provisions contained elsewhere in this Declaration or in the Bylaws of the Association, including those provisions which otherwise apply to the Declarant as a Unit Owner.

ARTICLE XI - DECLARANT'S RIGHTS TO CONTROL THE ASSOCIATION AND LIMITATIONS

Section 11.1. This Article Controls. The provisions of this Article shall control all inconsistent and conflicting provisions contained elsewhere in this Declaration or in the Bylaws of the Association.

Section 11.2. Period of Declarant Control. There shall be a period of Declarant control of the Association, during which a Declarant, or persons designated by the Declarant, may appoint and remove the officers of the Association and members of the Executive Board.

(a) The period of Declarant control shall terminate no later than the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created in the Community to Unit Owners other than a Declarant; or (ii) two years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or (iii) two years after any right to add new Units was last exercised.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

(c) Except as otherwise provided in C.R.S. §38-33.3-220(5), not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three members, at least a majority of whom must be Unit Owners other than the Declarant or designated representatives of Unit Owners

other than the Declarant; and the Executive Board shall elect the officers and the Executive Board members and officers shall take office upon election.

(d) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under C.R.S. § 38-33.3-308, the Unit Owners, by a vote of sixty-seven percent (67%) of all Unit Owners present and entitled to vote at a meeting of the Unit Owners at which a quorum is present may remove a member of the Executive Board with or without cause other than a member appointed by the Declarant.

Section 11.3. Voluntary Surrender. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant control set forth above. In that event, the Declarant may require that, for the duration of the period of Declarant control, specified actions of the Association or Executive Board as described in a recorded instrument executed by the Declarant, be approved by the Declarant before becoming effective.

Section 11.4. Association's Records. Within sixty (60) days after termination of Declarant's control and the election of a new Executive Board by the members, the Declarant shall deliver to the Association all records and property of the Association held or controlled by the Declarant as prescribed by the Colorado Common Interest Ownership Act.

ARTICLE XII - USE RESTRICTIONS

Section 12.1. Master Covenants. The Master Declaration sets forth use restrictions which apply to the Property. The restrictions imposed by this Article are in addition to the restrictions imposed under the Master Declaration.

Section 12.2. Leases. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and duly promulgated Rules and Regulations of the Association, and that any failure by the tenant to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. Other than as provided in this Section, there is no restriction on the right of any Owner to lease his property.

Section 12.3. Animals. No animals of any kind shall be raised, bred or kept upon the Property, except that dogs and cats may be kept, provided that they are not kept, bred or maintained for any commercial purpose and that such pets are at all times under the control of their Owner, well-mannered and behaved; and provided further that, in no event shall any Owner or occupant of any Unit keep more than a total of two (2) such animals, in any combination, at any time. Any Owner or occupant of a Unit harboring an animal upon the Property shall at all such times keep and maintain, in full force and effect, a homeowners insurance policy or other liability insurance coverage, with limits of not less than \$500,000, the covered risks of which shall include bodily injury, death and property damages caused by such animal. Notwithstanding the foregoing, the Executive Board may promulgate rules and regulations concerning the keeping of dogs and cats within the Community, which are more restrictive than those limitations set forth above. By way of example and not by way of limitation, the Executive Board shall have the right to absolutely prohibit the keeping of dogs or cats, or to implement a plan of special pet assessment dues which shall be payable by any Owner who keeps a dog or cat upon the Property. This **Section** shall have no application to a Commercial Unit approved by the WTCRB and the Town of Basalt for use as a pet shop, for pet grooming, or for any other commercial pet related business conducted in a Commercial Unit.

Section 12.4. Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, camper, trailer, machine or equipment may take place on the Property.

Section 12.5. No Junk Vehicles. No disabled, junk or inoperable vehicle may be stored in any parking space, parking area or upon any other part of the Property.

Section 12.6. Restrictions on Floor Loads. No Owner may place a load on any floor which exceeds the load for which the floor was designed. No Owner shall install or maintain any item of heavy furniture or equipment or make any other installation, except in a manner designed to achieve a proper distribution of weight.

Section 12.7. Signs. Before the Owner of any Unit shall display any signage, posters or other advertising devices upon any part of the Common Elements, the written approval of the Executive Board must first be procured. The provisions of

this Section are in addition to any approvals that may be required by the WTCRB and the Town of Basalt.

Section 12.8. No Nuisance or Hazard. No nuisance shall be permitted within the Unit or upon the Property, nor any use, activity or practice which would reasonably constitute an annoyance or hazard or which otherwise would tend to disturb or offend any Unit Owner or interfere with another Unit Owner's peaceful possession or enjoyment of his Unit or any part of the Common Elements shall be permitted. No unsafe, hazardous or unlawful use shall be permitted upon the Property or any portion thereof. All applicable laws, ordinances and governmental regulations shall, at all times, be observed.

Section 12.9. Use of Commercial Units. Commercial Units shall be used for permitted business and commercial purposes. No action shall be taken by the Association, any Member or any group of Members that would operate to prevent, hinder or compromise the use of any Commercial Unit or the conduct of any business from any Commercial Unit which is otherwise in compliance with the applicable zoning and PUD Regulations. A Commercial Unit may be used for any purpose (other than residential) permitted by the applicable zoning. Neither the Association nor its Members shall circumvent such entitlement through the adoption of rules or regulations or the amendment of this Declaration or the Bylaws, whether by vote or otherwise. Any restrictions on the use of a Commercial Unit beyond those contained in this Declaration and the applicable zoning and PUD Regulations shall require the written agreement of the Owners of all the Commercial Units.

The following restrictions and requirements shall apply to all Commercial Units:

- (a) No Commercial Unit shall be used for residential purposes.
- (b) All noise-producing machinery and equipment, including without limitation, exhaust fans, disposals, compactors and other kitchen equipment, speakers, amplifiers, and other audio equipment, shall be sound and vibration isolated from the building structure.
- (c) Any loud speaker must be equipped with a back box.

(d) Amplified live music is prohibited.

(e) Live music between the hours of 12:00 o'clock midnight and 9:00 o'clock a.m. is prohibited.

(f) All Commercial Units shall be equipped by the Declarant or the Owner prior to the initial occupancy with a ceiling system that provides a minimum Sound Transmission Class ("STC") rating of 60 or better. Such a ceiling system shall be kept and maintained by the Owner of the Commercial Unit at all times.

(g) A minimum of twenty-four (24) inches of space must be left between the bottom of the overhead girders forming the upper boundary of a Commercial Unit and the ceiling system as finally installed, in order to accommodate an easement in favor of the Association to install, maintain, repair, replace and reconstitute common utility service lines and facilities.

(h) No trash shall be removed from any Commercial Unit or delivered to any dumpster or trash collection area outside of the Unit between the hours of 9:00 o'clock p.m. and 9:00 o'clock a.m.

(i) No deliveries shall be made to any Commercial Unit from the below-grade parking areas or through the use of the elevator or stairwell.

Section 12.10. Use of Residential Loft Units. Residential Loft Units shall be used for single family residential purposes only, provided that, in-home businesses or occupations which do not involve employees other than the Unit Owner(s), the solicitation or invitation of the general public, or the servicing of customers shall be permitted, so long as activities are conducted entirely within the Residential Loft Unit and do not cause additional traffic, increase the parking burden within the development or otherwise create a nuisance.

Decks, patios, balconies, porches and General and Limited Common Elements shall not be used for the storage of personal property of any kind. Nothing shall be placed on or in windows or doors or otherwise on the exterior of any Residential Loft Unit or on the Common Elements, which creates an unsightly appearance. Skis, snowboards, bikes, mountain bikes, kayaks and other items of

personal property shall not be allowed to remain outside except when in actual use. No laundry shall be dried or hung outside.

Section 12.11. Use of Telecommunications Unit. The Telecommunications Unit shall not be used as habitable space. Its use shall be strictly limited to the provision of telecom services through automated operating system facilities and equipment. For purposes of this Section, telecom services include, without limitation, telephone, broadband and fiber optic networks and services, multi-channel video services, voice services, data services, security services, television, music and all other forms of communications services.

The Unit shall not be open to the public, shall not be used as an office and shall not be occupied by any person or persons. The space shall have lighting sufficient only to maintain the automated equipment therein contained and shall be provided with no heat, no operable windows and a concrete floor without floor coverings. Access to the Unit shall be limited to the periodic service calls, maintenance personnel and service technicians as required to maintain the equipment and facilities in good working order. At all times other than when conducting such service calls, the Unit shall be kept locked. The Unit shall in no event be converted to habitable space.

Section 12.12. Use of Parking Space Units. Parking Space Units shall be used for the parking of licensed operable vehicles only. Except where the criteria set forth in C.R.S. 38-33.3-106.5 applies, no oversize vehicles (vehicles with a height in excess of 7½ feet or a width in excess of 6½ feet) shall be parked in a Parking Space Unit or permitted within the parking facilities.

Section 12.13. Use of Storage Space Units. Storage Space Units shall be used for the storage of non-hazardous supplies and other items of personal property. Storage Space Units shall not be used as habitable space, shall not be open to the public and shall not be occupied by any person or persons. The space shall have minimum lighting and shall be provided with no heat, no operable windows and a concrete floor without floor covering. Storage Space Units shall be kept locked except when accessed for storage purposes. No Storage Space Unit shall be converted to habitable space.

ARTICLE XIII - INSURANCE

Section 13.1. Association to Maintain Insurance. Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall maintain to the extent reasonably available:

(a) Property insurance on the Common Elements for broad form covered causes of loss. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use, as the buildings on the Property, including, but not limited to vandalism and malicious mischief. The amount of insurance must be not less than the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; provided that the casualty protection on the buildings and improvements maintained by the Association shall insure the improvement only to the interior bare walls as initially constructed and installed by the Declarant. It shall be the responsibility of each Owner to insure the finish of the interior walls and all cabinets, furnishings, fixtures, appliances, personal property, and other contents of his Unit. The named insured shall be the Association, individually, and as agent for the Owners and their Mortgagees, without naming them. Provisions shall be made for the issuance for mortgagee endorsements and memoranda of insurance to the Mortgagees of the Owners. Such insurance policy shall provide that payments by the insurer for losses shall be made to the Association or to an insurance trustee in the State of Colorado designated by the Association for that purpose. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or other Unit Owners. The scope of coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location, and use.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements with coverage limits as deemed sufficient in the judgment of the Executive Board, but in no event less than \$1,000,000 per occurrence and

\$2,000,000 aggregate, insuring the Executive Board, the Association, the management agent, if any, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in Declarant's capacity as a Unit Owner and board member. The Owners (Unit Owners) shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one (1) or more insured parties against other insured parties. The Town of Basalt shall also be included as an additional insured. The maintenance of such insurance by the Association and the acceptance of such coverage by the Town of Basalt, does not waive or purport to waive the provisions of the Colorado Governmental Immunity Act as applicable to the Town of Basalt.

Section 13.2. Non-Availability. If the insurance described above is not reasonably available, or if any policy of such insurance is canceled or not renewed, without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid, U.S. mail, to all Unit Owners.

Section 13.3. Additional Coverage Required. Pursuant to the Act, the Property Insurance and the Commercial General Liability Insurance required above, must provide that:

- (a) Each Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;
- (b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;
- (c) No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be 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 a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 13.4. Adjustment of Property Loss. Any loss covered by the Property Insurance described above, must be adjusted with the Association, but shall be held, administered and applied in the manner provided by the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-313(5) - (9).

Section 13.5. Procedures; Deductibles; Assessments. 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 Unit Owners causing such loss or benefitting from such repair or restoration, all deductibles paid by the Association. In the event that more than one (1) Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Unit Owner a pro rata share of any deductible paid by the Association.

Section 13.6. Owner's Insurance. An insurance policy issued to the Association does not obviate the need for Unit Owners to obtain insurance for their own benefit.

Section 13.7. Officers and Directors. The Association shall keep and maintain Officers and Directors errors and omissions and personal liability coverage, with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, to protect the officers and directors from personal liability in relation to or arising out of their duties on behalf of the Association.

Section 13.8. Fidelity Bonds and Insurance. The Association shall obtain adequate fidelity bonds or insurance coverage to protect against dishonest acts of any Unit Owner, Executive Board member, Officer, employee or Manager of the Association handling or responsible for Association funds. Such fidelity bonds or insurance coverage shall not be less than the aggregate amount of two (2) months current assessments for the entire Property, plus reserves as calculated from the current budget of the Association, or \$50,000, whichever is greater. The Association may carry fidelity bonds or insurance in such greater amount as the Executive Board deems prudent.

Section 13.9. Managing Agent Insurance. The Association shall require any independent contractor employed for purposes of managing the Common Interest Community to carry fidelity bonds or insurance for the benefit of the Association to the same extent as the Association or with such greater coverage limits as the Association or the Act may require, for the benefit of the Association and any such Manager shall maintain and submit evidence of such coverage to the Association.

Section 13.10. Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 13.11. Other Insurance. The Association may also obtain insurance coverage against any such other risks of a similar or dissimilar nature, as deemed appropriate.

Section 13.12. Insurance Expense. The cost of all insurance which the Association is required or permitted to maintain, shall be assessed to the Unit Owners as a Common Expense.

Section 13.13. Annual Review. The Executive Board shall review the insurance coverage for the Association at least annually for the purpose of determining the amount of insurance required.

Section 13.14. Duty to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless: the Community is terminated in accordance with the Act; the repair or replacement would be illegal; sixty-seven percent (67%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or, prior to the conveyance of any Unit to a person other than the Declarant, the holder of a Deed of Trust or Mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

ARTICLE XIV - ASSESSMENT CERTIFICATES AND NOTICES

Section 14.1. Assessment Certificates. Upon request, the Association shall provide any Owner, prospective purchaser, Mortgagee or prospective Mortgagee, of any Unit in the Community a certificate in writing signed by an officer of the Association setting forth the amount of any assessments, interest or late charges due in connection with any specified Unit. A reasonable charge may be made by the Association for the issuance of such certificates.

Section 14.2. Notice of Assessment Liens. Upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association shall furnish to a Unit Owner or his designee, or to a holder of a Security Interest, mortgage or deed of trust, or its designees, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. This statement shall be furnished within fourteen (14) days after receipt of the request, and is binding on the Association, the Executive Board and every Unit Owner. If no statement is furnished to the Unit Owner or holder of the Security Interest, mortgage or deed of trust, or to his designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request.

ARTICLE XV - GENERAL PROVISIONS

Section 15.1. Notices to Owners. Notice to an Owner of matters effecting the Community by the Association or by another Owner, shall be sufficiently given if such notice is in writing and is delivered personally, by courier or private service delivery, or by deposit in the U.S. mail, postage prepaid, addressed to such Owner at the registered mailing address furnished by the Owner to the Association in accordance with the Bylaws. Such mailing shall be deemed adequate, whether mailed ordinary mail, certified mail or registered mail.

Section 15.2. Recording Data. All recorded easements and licenses appurtenant or included in the Community, are set forth on Plats recorded as Reception Nos. 763043 and 917692 of the Eagle County, Colorado records. In addition, the Community will be subject to the easements and licenses granted or

reserved pursuant to this Declaration and the Condominium Map and to the provisions of the Amended and Restated Final Development Plan PUD Control Document for Willits Town Center recorded as Reception No. 935330. (All Reception Nos. refer to the records of Eagle County, Colorado).

Section 15.3. Easement Rights. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging a Declarant's obligations or exercising Special Declarant Rights, whether arising under this Declaration or the Act.

Section 15.4. Covenants to Run with the Land. This Declaration shall run with the land and be a burden and a benefit to the Units within the Community.

Section 15.5. Enforcement. The failure of any Owner to comply with the provisions of this Declaration or with the Articles of Incorporation, Bylaws or the duly promulgated Rules and Regulations of the Association, shall give rise to a cause of action in the Association, as well as any aggrieved Unit Owner for the recovery of damages or injunctive relief, or both. In any action brought to enforce the provisions of this Declaration, the Articles of Incorporation, the Bylaws or the duly promulgated Rules and Regulations of the Association, between or among (in any combination) the Association, the Declarant and/or any Unit Owner(s), the prevailing party or parties shall be entitled to recover from the non-prevailing party or parties all reasonable costs and expenses, including attorney's fees incurred in connection with any such action. The failure of the Association, the Declarant or any Owner to enforce any such rights, shall in no event be deemed a waiver of the right to do so in the future. The Town of Basalt is recognized as a third-party beneficiary with respect to the use restrictions described in **Article XII**, and may enforce the same in its own right.

Section 15.6. Amendments. The Declarant may amend the Declaration and any Condominium Map to correct clerical, typographical or technical errors or to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association. The Declarant may also amend this Declaration in the exercise of Declarant's reserved development rights and as

otherwise permitted by the Act. The Association may amend this Declaration with respect to those matters expressly permitted by the Act. Except as provided above, this Declaration may be amended only by the vote or agreement of Unit Owners representing at least sixty-seven percent (67%) of the Units within the Community and by the recordation of a certified copy of the Resolution of Amendment, signed and acknowledged by the President and Secretary of the Association, recorded in the records of the Clerk and Recorder of Eagle County, Colorado. Notwithstanding the provisions hereof, this Declaration shall not be amended without the prior written consent of the Town of Basalt.

Section 15.7. Termination of Declaration. This Declaration shall not be terminated except upon the written agreement of Owners representing not less than sixty-seven percent (67%) of the Units within The Community, and must be evidenced by a Termination Agreement or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners. The Termination Agreement must specify a date after which the agreement will be void unless it is recorded before that date. The Termination Agreement and all ratifications thereof must be recorded in Eagle County, Colorado, and shall be effective only upon recordation. Notwithstanding the provisions hereof, this Declaration shall not be terminated without the prior written consent of the Town of Basalt.

Section 15.8. Restoration. If at any time all Owners and all holders of first mortgages shall agree that the Community has become obsolete and shall approve a plan for its renovation or restoration, the Association shall promptly cause such renovation or restoration to be made according to such plan. All Owners shall be bound by the terms of such plan and the cost of the work shall be a Common Expense.

Section 15.9. Duration. This Declaration shall continue in effect until revoked or terminated in the manner provided above.

Section 15.10. Interpretation and Conflicts. Any provision of this Declaration in conflict with the Act shall not be deemed invalid in its entirety, but shall be deemed amended to the minimum extent necessary to comply with the Act.

Section 15.11. Severability. If any clause or provision of this Declaration is determined to be illegal, invalid or unenforceable under present or future laws, all other terms and provisions hereof shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, this Condominium Declaration has been executed this _____ day of _____, 2006.

DECLARANT:

TRIANGLE PARK LOFTS LLC,
a Colorado limited liability company

By: _____
Manager

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Michael B. Lipkin, as Manager on behalf of Triangle Park Lofts LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

bound by the terms of such plan and the cost of the work shall be a Common Expense.

Section 15.9. Duration. This Declaration shall continue in effect until revoked or terminated in the manner provided above.

Section 15.10. Interpretation and Conflicts. Any provision of this Declaration in conflict with the Act shall not be deemed invalid in its entirety, but shall be deemed amended to the minimum extent necessary to comply with the Act.

Section 15.11. Severability. If any clause or provision of this Declaration is determined to be illegal, invalid or unenforceable under present or future laws, all other terms and provisions hereof shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, this Condominium Declaration has been executed this 10th day of October, 2006.

DECLARANT:

TRIANGLE PARK LOFTS LLC,
a Colorado limited liability company

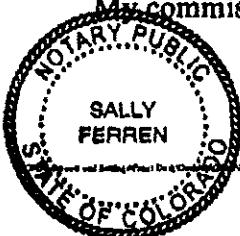
By: Michael B. Lipkin

STATE OF COLORADO)
COUNTY OF EAGLE)
) ss.

The foregoing instrument was acknowledged before me this 6th day of October, 2006, by Michael B. Lipkin, as Manager on behalf of Triangle Park Lofts LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 10-28-07



Notary Public

44

My Commission Expires 10/28/2007

**FIRST AMENDMENT
TO
CONDOMINIUM DECLARATION
FOR TRIANGLE PARK LOFTS
(Basalt, Colorado)**

KNOW ALL MEN BY THESE PRESENTS, that:

Triangle Park Lofts LLC, a Colorado limited liability company (the "Declarant"), does hereby declare and adopt the following Amendment to the Condominium Declaration for Triangle Park Lofts, recorded October 10, 2006 as Reception No. 200627628 of the Eagle County, Colorado records (the "Declaration").

RECITALS

A. Section 15.6. of the Declaration provides that the Declarant may amend the Declaration and to correct clerical errors.

B. Clerical errors appear in Sections 9.3. and 9.4. of the Declaration which require correction.

AMENDMENT

____ NOW, THEREFORE, Sections 9.3. and 9.4. of the Declaration are hereby amended to read in their entirety as follows:

Section 9.3. Voting Rights. The aggregate number of votes authorized and allocated among the Units shall total two thousand five hundred (2,500) votes. The number of votes allocated to each Unit is determined by multiplying the Unit's percentage interest in the Common Elements by two thousand five hundred (2,500).

Section 9.4. Allocation of Interests. With reference to the foregoing criteria, the interests of each Unit have been determined and are hereby allocated as provided in the Allocated Interests Table attached. The allocation of interests reflected in the Table attached shall be deemed binding and conclusive, subject however, to the provisions of Section 9.5, Section 9.6. and Article X below.

IN WITNESS WHEREOF, this Amendment to the Condominium Declaration of Triangle Park Lofts has been executed this 11th day of October, 2006.

DECLARANT:

TRIANGLE PARK LOFTS LLC,
a Colorado limited liability company

By:

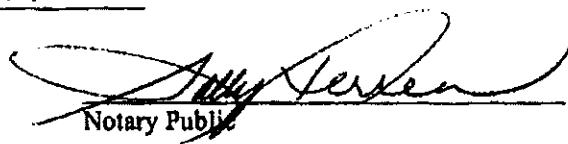
Michael B. Lipkin, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing First Amendment to Condominium Declaration for Triangle Park Lofts was acknowledged before me this 11 day of October, 2006, by Michael B. Lipkin, as Manager on behalf of Triangle Park Lofts LLC, a Colorado limited liability company.



My Commission Expires 10/28/2007


Sally Ferren
Notary Public

APPROVED this 11 day of October, 2006:

TOWN OF BASALT

By: Leroy Duroux
Leroy Duroux, Mayor

ATTEST:

Pamela K. Schilling
Pamela K. Schilling, Town Clerk