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**CONDOMINIUM DECLARATION
FOR
CLEAVER AND CALEB CONDOMINIUMS**

THIS CONDOMINIUM DECLARATION FOR CLEAVER AND CALEB CONDOMINIUMS ("Declaration"), is made and declared this 12 day of September, 2007, by **CLEAVER + EDELMAN LAND PLANNING AND DEVELOPMENT NO. 1, LLC**, a Colorado limited liability company ("Declarant").

RECITALS:

- A. Declarant is the owner of all of the real property constituting the Cleaver and Caleb Condominiums defined and described as LOT 7B; KAY PUD, TOWN OF CARBONDALE, COUNTY OF GARFIELD STATE OF COLORADO and is located at 1901 Delores Way, Carbondale, Garfield County, Colorado (the "Property")
- B. There is constructed on the Property a two (2) story mixed use, residential, commercial and retail building of steel construction ("Building" as hereinafter defined) containing fourteen (14) condominium units.
- C. Declarant desires to make this Declaration to provide for the condominium ownership of the Building and Property under the laws of the State of Colorado and to define the character, duration, rights, obligations and limitations of condominium ownership of Cleaver and Caleb Condominiums.

NOW, THEREFORE, Declarant hereby declares that the Property and the Building and other improvements located on the Property shall be subject to the provisions of this Declaration, each and all of which provisions are hereby declared to and deemed to run with the land as covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens as to Declarant and to all persons or entities hereafter acquiring or owning any interest in the Property or improvements thereon, however such interest may be obtained.

**ARTICLE I
SUBMISSION OF REAL ESTATE AND DEFINITIONS**

a) Submission of Real Estate.

Declarants hereby declare that all of the Real Estate shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate and their assigns and shall inure to the benefit of each Owner thereof. Additionally, Declarants hereby submit the Real Estate to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et. seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act", also referred to as CCIOA). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

b) Definitions

Defined Terms. Each capitalized term not otherwise defined in this Declaration or in the Condominium Map shall have the meaning specified or used in the Act:

- 1.1 Allocated Interest. "Allocated Interest" shall mean and refer to the undivided interest allocated to a Unit in the Common Elements, the Common Expense Liability, and votes in the Association as shown on the attached Exhibit A.
- 1.2 Association. "Association" shall mean and refer to the Cleaver and Caleb Condominium Association, Inc. and its successors and assigns. The Association shall be incorporated as a nonprofit corporation under Colorado law.
- 1.3 Board. "Board" shall mean and refer to the Executive Board of the Association.
- 1.4 Building. "Building" shall mean and refer to the building, including all fixtures and improvements associated therewith, situated on the Property.
- 1.5 Common Elements. "Common Elements" shall mean all of the Condominium Project except all Units. Common Elements shall be divided into two categories, "General Common Elements" and "Limited Common Elements" having the definitions below:
 - 1.5.1 "General Common Elements" means all Common Elements except all Limited Common Elements, and may be designated by abbreviation on the Condominium Map as "GCE."
 - 1.5.2 "Limited Common Elements" means those Common Elements designated or reserved herein or on the Condominium Map for the exclusive use by fewer than all of the Owners of Units, and may be designated by abbreviation on the Condominium Map as "LCE."
- 1.6 Common Expense Liability. "Common Expense Liability" means and refers to the liability for common expenses allocated to each Condominium Unit.
- 1.7 Common Expenses. "Common Expenses" means and refers to expenditures or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.
- 1.8 Condominium. The name of the Condominium is the CLEAVER AND CALEB CONDOMINIUMS (the "Condominium"). This Common Interest Community is a Condominium regime.
- 1.9 Condominium Map. "Condominium Map" or "Map" means the Cleaver and Caleb Condominium Exemption Map, a three dimensional plat or survey, or any supplement or amendment thereto, of the Property, containing a survey and legal description thereof, the location of the Building with respect to the boundaries of the Property, sufficient information to identify the Units, and the vertical and horizontal locations and dimensions of the Units and Building. The Map shall show the location and designation of General and Limited Common Elements, and such other information as may be included therein in the discretion of Declarant or as shall be required by law.

- 1.10 Condominium Unit. "Condominium Unit" means a Unit together with an appurtenant and undivided Allocated Interest in the Common Elements in the percentages set forth in Exhibit "A".
- 1.11 Declaration. "Declaration" means by this Condominium Declaration for the Cleaver and Caleb Condominiums, and any supplements or amendments thereto.
- 1.12 Declarant. "Declarant" shall mean Cleaver + Edelman Land Planning and Development No. 1, LLC, a Colorado limited liability company.
- 1.13 Mortgage. "Mortgage" means any mortgage, deed of trust or other security instrument by which a Condominium Unit or any interest therein is encumbered.
- 1.14 Mortgagee. "Mortgagee" means any person or entity named as the mortgagee or beneficiary under any mortgage or deed of trust by which the interest of any Owner in a Condominium Unit is encumbered.
- 1.15 Owner. "Owner" means any person or entity at any time owning a Condominium Unit; the term "Owner" shall exclude any Mortgagee, as hereinafter defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- 1.16 Project. "Project" and "Condominium Project" shall collectively mean the entire Property, the Units, the Building and all other improvements thereto and the Common Elements.
- 1.17 Property. "Property" means the real property described in the first recital hereof.
- 1.18 Unit. "Unit" means the individual air space constituting each of the fourteen (14) Units of the Project bounded by the unfinished interior surfaces of the exterior walls, floors, ceilings, windows and window frames, and doors and door frames, and which is separately identified on the Map, and all improvements respectively therein shown on the Map as a Unit.

ARTICLE II PREPARATION AND FILING OF THE CONDOMINIUM MAP

- 2.1 The Condominium Map shall be filed for record in the Garfield County Clerk and Recorder's records contemporaneously with the recording of this Declaration. The Condominium Map shall reflect the true location of the Buildings, Units and Common Elements, horizontally and vertically.

ARTICLE III NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

- 3.1 Estates of an Owner. The Project is declared to be fourteen (14) Condominium Units consisting of separate fee simple interests in each Unit each with an undivided percentage fee simple ownership interest in the Association as set forth in Exhibit "A" attached

hereto and made a part hereof which lists the Allocated Interest of each Unit. Such undivided interest in the Association ownership is hereby declared to be appurtenant to the respective Units.

- 3.2 No Right to Combine Units or Subdivide Units without Association and Requisite Town Approval. Declarant and subsequent Owners shall have no right to combine or subdivide any Unit without first obtaining written permission of the Association and approval of the Town of Carbondale. Any combination of Units shall not affect the designation or prevent separate ownership of such Units in the future. Any bearing walls or other structural separations between combined Units, or any space which would be occupied by such structural separation but for the combination of Units, shall remain Common Elements. The combination of Units shall not modify the aggregate percentage interest in the Common Elements allotted to such Units before combination. Alterations to bearing or structural walls or other structural separations shall not alter the bearing capabilities of such structures, shall not adversely affect other Owners, and shall have the prior written consent of the Board. Declarant reserves the right to designate as Common Elements any bearing or structural walls, floors or other structural separations between or within Units combined or any space which would be occupied by such structural separations but for the combination of the Units.
- 3.3 Limited Common Elements. That portion of the Common Elements designated on the Condominium Map as "Limited Common Elements" or "LCE" is hereby set aside and reserved for the exclusive use, occupancy, control, maintenance and repair of and by the Owner or Owners whose Unit or Units is or are designated as associated with such Limited Common Elements on the Condominium Map.
- 3.4 Title. Title to a Condominium Unit may be held or owned by any entity and in any manner in which title to real property may be held or owned in the State of Colorado.
- 3.5 Inseparability. No part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be separated from any other part thereof during the period of Condominium ownership prescribed herein, so that each Condominium Unit and the undivided interest in the Common Elements appurtenant to such Condominium Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium Unit or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Condominium Unit together with all appurtenant rights created by law or by this Declaration.
- 3.6 Partition not Permitted. The Common Elements shall be owned in common by all the Owners of Units, and no Owner may bring any action for partition thereof.
- 3.7 Owner's Rights and Easements to General Common Elements. Subject to the limitations contained in this Declaration, each Owner shall have a non-exclusive right and easement of ingress and egress over, across and upon the General Common Elements for the purpose of ingress and egress to and from the Owner's Unit by the Owner and such Owner's, tenants, occupants, customers, employees and invitees, use of the Common Area, for pedestrian and vehicular traffic, which right and easement shall be appurtenant to, and pass with the transfer of title to each Owner's Unit.

- 3.8 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right to finish or refinish and decorate only inward from the interior surfaces of the unfinished walls, ceilings, floors, windows and doors forming the boundaries of the Owner's Unit.
- 3.9 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same is hereby declared to exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same is hereby declared to exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.
- 3.10 Easements of Access for Repair, Maintenance and Emergencies. The Owners shall have the irrevocable right, to be exercised by the Association, as their agent, to have access to the Common Elements from time to time during such reasonable hours as may be necessary (including immediate access in the event of an emergency) for the maintenance, repair or replacement thereof. Damage to any part of a Unit or Units resulting from the maintenance, repair, or emergency repair of the Common Elements at the instance of the Association shall be an expense of all of the Owners. In the event the damage to that part of the Common Elements previously described is the result of the negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the damaged property shall be restored substantially to the same condition as existed prior to damage. The amount owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article VIII hereof.
- 3.11 Owner's Right to Ingress and Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the General Common Elements necessary for ingress and egress to and from such Owner's Unit and shall have the right to the horizontal and lateral support of such Owner's Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit.
- 3.12 Association's Right to Use of Common Elements. The Association shall have a nonexclusive easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain storage facilities for use by the Association in the General Common Elements.
- 3.13 Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as set forth in this Article, even though no specific reference to such easements or to those sections appear in such conveyances.
- 3.14 Ad Valorem Taxation. After the Condominium Map or any supplemental or amended Map shall have been filed for record in Garfield County, Colorado, Declarant, or its successors, shall deliver written notice to the Assessor of Garfield County, Colorado, as provided by law, setting forth the descriptions of the Condominium Units so that each

Condominium Unit shall be assessed separately thereafter for all taxes, assessments, and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

- 3.15 Liens Prior to First Mortgage. All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Condominium Units and not to the Condominium Project as a whole.
- 3.16 Drainage Easements. A Drainage Easement Agreement recorded on ___, 2007 as Reception No. _____ in the Garfield County public records and as shown on the Condominium Map has been established by the Declarant and the Owner of the adjacent Lot 8, for the benefit and burden of the subject Property and the adjacent lot known as Lots 8, Kay PUD; Town of Carbondale.

ARTICLE IV CONVEYANCE AND DESCRIPTION OF A CONDOMINIUM UNIT

- 4.1 Every contract for the sale of a Condominium Unit and every other instrument affecting title to a Condominium Unit may describe that Condominium Unit by the reference (which may include a number) shown on the Condominium Map with the appropriate reference to the Condominium Map and to this Declaration, as each shall appear in the records of the County Clerk and Recorder of Garfield County, Colorado, in the following fashion:

Condominium Unit _____ as shown on the Cleaver and Caleb Condominium Exemption Map for the Cleaver and Caleb Condominiums recorded on _____, 2007 as Reception No. _____ in the records of the Garfield County, Colorado Clerk and Recorder, and as defined and described in that Condominium Declaration for the Cleaver and Caleb Condominiums, recorded on _____, 2007 as Reception No. _____ in the records of the Garfield County, Colorado Clerk and Recorder (and, if applicable, any supplemental declaration thereto).

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

ARTICLE V MECHANIC'S LIEN RIGHTS

- 5.1 No labor performed or materials furnished for use in connection with any Unit, or any Limited Common Element designated for the exclusive use of a Unit, with the consent or at the request of an Owner or an Owner's agent or subcontractor shall create any rights to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common

Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Condominium Unit, or any part thereof, of any other Owner for labor performed or for materials furnished in work on the first Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs and attorneys' fees of the Association incidental thereto, and obtaining discharge of the lien. Such collection shall be made by a special assessment pursuant to Article VIII.

ARTICLE VI THE ASSOCIATION

- 6.1 Membership. Every Owner shall be entitled and required to be a member of the Association. The Association shall be incorporated as a nonprofit corporation. If title to a Condominium Unit is held by more than one person and/or entity, the membership related to that Condominium Unit shall be shared by all the Owners thereof in the same proportionate interests and by the same type of tenancy in which the title to the Condominium Unit is held; provided, however, the vote for each membership may be cast only as a whole, and fractional votes shall not be allowed. In the event that the parties sharing such membership are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain Condominium Unit, it will thereafter be conclusively presumed for all purposes that such Owner or Owners were acting with the consent of all other Owners of the same Condominium Unit. In the event more than one vote is cast for a particular Condominium Unit, none of said votes shall be counted and all of said votes shall be deemed void. An Owner shall be entitled to one membership for each Condominium Unit owned by such Owner. No person or entity other than an Owner may be a member of the Association and the memberships in the Association may not be transferred except in connection with the transfer of a Condominium Unit; provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit.
- 6.2 Voting Rights. The Association shall have one class of voting membership, each Owner having the same weighted percentage vote as that Owner's Allocated Interest as specified as Exhibit "A" applicable to that Owner's Unit.
- 6.3 Transfer. The duties of the Association may be delegated to any other person or entity, including the engaging of the services of a professional manager or managing agent, subject to the following limitations:
- 6.3.1 No transfer, assignment or delegation shall relieve the Association or the Board from the obligations and responsibilities set forth in this Declaration.
- 6.3.2 Any delegation shall not revoke or change any of the rights or obligations of any Owners as set forth in this Declaration;

- 6.3.3 Any agreement for professional management shall be in writing, and provide for the termination by either party without cause and without payment of termination fee on thirty (30) days written notice.

ARTICLE VII GENERAL RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

The Association may exercise any and all other rights or privileges given to it by this Declaration, or by its Articles of Incorporation or Bylaws, or as may otherwise be given to it by law or may be implied reasonably or necessary to carry out its purposes.

- 7.1 Maintenance and Repair of the Common Elements. The Association, subject to the rights of the Owners set forth in Article III above, shall be responsible for the operation, maintenance, management, repair and control of the Common Elements, and shall keep the same in a clean and attractive condition, in good order and repair.
- 7.2 Owner's Responsibility for Unit. Each Owner of a Condominium Unit shall keep the area within said Owner's Unit and Limited Common Elements designated for such Owner's use in a clean, sanitary and attractive condition, and shall maintain and repair the same at such Owner's expense.
- 7.3 Miscellaneous Services. The Association may obtain and pay for the services of a person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may contract with others to furnish parking area lighting, maintenance, trash collection, snow removal and other services to the Common Elements.
- 7.4 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of Owners of Units tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners of Units in the proportion of their ownership interest in the Common Elements. Such interest shall not be transferable except with the transfer of a Condominium Unit. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner of a Condominium Unit may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners of Condominium Units. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium Unit.
- 7.5 Rules and Regulations. Upon majority vote of the Board, the Association may make (and thereafter amend from time to time), and the Owners shall comply with, reasonable rules and regulations governing the use of the Common Elements and personal property for common use, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

- 7.6 Rights. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with any obligation of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such obligations or to obtain damages for noncompliance, all to the extent permitted by law. The Association may, without having the obligation to do so, undertake the maintenance and repair obligation of any Owner who fails to perform the same and assess such nonperforming Owner with the actual costs therefore under Article VIII. The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VIII ASSESSMENTS

- 8.1 Agreement to Pay Assessment. Declarant, for each Condominium Unit owned by it within the Project, and for and as the initial Owner of the Project and every part thereof, hereby covenants, and each Owner of any Condominium Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association regular assessments made by the Association for the purposes provided in this Declaration, and special assessments for the matters as provided in Section 8.5 or elsewhere in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article or in the Bylaws.
- 8.2 Amount of Regular Assessments. The regular assessments against all Condominium Units shall be based upon advance estimates by the Association to provide for the payment of all estimated expenses for a period of one (1) year arising out of or connected with the maintenance and operation of the Common Elements and furnishing utilities and other services to such portion of the Common Elements as are not separately metered or charged to the Unit Owners. Said estimated expenses may include, but are not limited to, management fees; insurance premiums; landscaping; utilities for lighting and electricity; snow removal; trash and garbage collection; water and sewer service; repairs, replacements and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; and 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. The Association may also create a reasonable and adequate contingency reserve, surplus or sinking fund for maintenance, repairs and replacement of the Common Elements that must be replaced on a periodic basis, assessments for such reserve, surplus or sinking fund to be paid in regular monthly installments rather than by special assessments.
- 8.3 Apportionment of Assessments. Any assessments (either regular or special) assessed pursuant hereto against all Owners shall be assessed to the Owners in proportion to their percentage interest in the Common Elements, i.e. their Allocated Interest.
- 8.4 Notice of Regular Assessments and Time for Payment Thereof. Following the determination of regular assessments, the Association shall give written notice to each

Owner as to the amount of the regular assessment with respect to a Condominium Unit on or before the first day of each calendar year. Regular assessments shall be paid without the requirement of further notice in twelve (12) equal monthly installments, the first installment being due the 1st day of the first month of the year for which the regular assessment is made, and the 1st day of the year for which the regular assessment is made, and the 1st day of each month thereafter until paid in full. Monthly installments of the regular assessments shall be due and payable no later than the 10th day of each month or be declared delinquent. Delinquent payments of regular assessments shall bear interest from the date of delinquency until paid at the rate of one and one-half percent (1 1/2%) per month. Failure of the Association to give timely notice of the annual regular assessment as provided herein shall not affect the liability of the Owner of any Condominium Unit for such regular assessment, but the date when the monthly payments shall commence in such case shall be ten (10) days after such notice shall have been given. In the event an Owner shall fail to bring delinquent regular assessments current within twenty (20) days of written notice of delinquency given the Association, together with interest thereon, the Association may accelerate and declare immediately due and payable the balance of such Owner's regular assessment of that year. Upon acceleration, unpaid regular assessments and interest shall be deemed principal, and shall draw interest from the date of acceleration at the same rate as delinquent regular assessments.

- 8.5 Special Assessments. In addition to the monthly regular assessments authorized by this Article, the Association may levy special assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction, capital improvement reconstruction or unexpected repair or replacement of the Common Elements or any part thereof, deficiencies in operating funds from regular assessments; or for any other expense incurred or to be incurred as provided in this Declaration; Any amounts assessed pursuant hereto against all Owners shall be assessed to all Owners as provided in Section 8.3. Notice in writing of the amount of such special assessments and the time and method of payment thereof shall be given promptly to the Owners. Payment of a special assessment may be made in any manner deemed reasonable or necessary by the Association, including monthly installments. A special assessment shall be deemed delinquent if not paid within thirty (30) days of the due date if the same is payable in a single payment, or within ten (10) days of the due date of each month, if the same is due in monthly installments. Delinquent special assessments hereunder shall bear interest at the same rate for delinquent regular assessments pursuant to Section 8.4, and the Association may accelerate the balance due of any special assessment remaining delinquent following twenty (20) days written notice in the same manner as regular assessments.

- 8.6 Lien for Assessments. All sums assessed to any Condominium Unit pursuant to this Article, together with interest thereon as provided herein and any legal fees or expenses incurred to prepare and record such lien and recording fees, shall be secured by a lien on such Condominium Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Condominium Unit, except only for: (a) ad valorem tax and special assessment liens on the Condominium Unit in favor of any governmental assessing authority provided such lien is by law made prior to the lien created by this Article; and (b) a lien for all sums unpaid on the first Mortgage duly recorded in the Garfield County, Colorado, real estate records including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms

of such instrument accrued before the date of delinquency. All other lienors acquiring liens on any Condominium Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence the lien created for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed by the Association and may be recorded in the office of the County Clerk and Recorder of Garfield County, Colorado. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Colorado. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay the Association any assessments against the Condominium Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, encumber and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the Garfield County, Colorado, real estate records, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

Upon the written request of any encumbrancer of a Condominium Unit, specifically including any first Mortgagee, the Association shall give written notification of any default in the performance by any individual Condominium Unit Owner of any obligation under this Declaration or the Articles of Incorporation or Bylaws of the Association not cured within sixty (60) days of such default, specifically including any assessments remaining unpaid for a period of sixty (60) days following the date they are due and payable.

8.7 Personal Obligations of Owner. The amount of any assessment against any Condominium Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of such Owner's Condominium Unit.

8.8 Statement of Account. Upon payment of a reasonable fee to be determined from time to time, but not to exceed \$50, and upon thirty (30) days advance written request in

compliance with Section 17.2, of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium Unit, the Association shall issue a written statement of such Owner's account setting forth the amount of the unpaid assessments, if any, with respect to such Condominium Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within thirty (30) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its lien subsequent to requesting such statements. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the thirty-day period provided herein, and the purchaser subsequently acquires the Condominium Unit.

- 8.9 Personal Liability of Purchaser or Successor for Assessments. Subject to the provisions of Section 8.8, a purchaser or successor in title to a Condominium Unit shall be jointly and severally liable for all unpaid assessments against the Condominium Unit up to the time of the grant of conveyance, without prejudice, to the purchaser's or successor's right to recover from the seller or predecessor in interest the amount paid for such assessments.
- 8.10 Inspection of Records. Any Owner or Mortgagee may inspect the accounting records of the Association in accordance with the applicable provision in the Bylaws.
- 8.11 Water and Sewer Service. Although the Units are separately metered, the Association shall be responsible for the payment of water and sewer bills to the Town of Carbondale. The Association shall invoice and collect the balance based on the bills received for each Unit. The Association maintains the right to discontinue water service to any Unit that is delinquent in the payment of water bills.

ARTICLE IX

OWNERSHIP AND USE OF CONDOMINIUM UNITS AND COMMON ELEMENTS

9.1 Use of Condominium

- 9.1.1 No Condominium Unit shall be structurally altered in such a fashion as to affect the bearing capabilities of the Building, affect plumbing, electrical or other utilities within the Common Elements, or conversion or alteration of the Common Elements be made for use by less than all of the Owners, without the prior written consent of the Board. Recognizing that the Common Elements are owned by the Association and that each Owner owns an undivided interest in the Association based on the percentages listed on Exhibit "A", each Owner by acceptance of a deed to such Owner's Condominium Unit irrevocably constitutes and appoints the Board as such Owner's attorney in fact to deal with the Common Elements as authorized by this Section 9.1.1, and Section 9.2.3 or Section 9.3.3. The Board shall have the right to open judgment on any such question to a vote of the membership of the Association in which vote a majority of the Allocated Interest shall govern.

- 9.1.2 Each Owner shall keep the interior and exterior of their respective Units in a clean, sanitary and attractive condition, and good state of repair.

9.2 Use of General Common Elements.

- 9.2.1 There shall be no obstruction of the General Common Elements, nor shall any personal property of any Owner be stored on any part of the General Common Elements without the prior written consent of the Board.

- 9.2.2 It is the specific and underlying intent of this Declaration to preserve and protect the visual appearance of the Project. Accordingly, no improvement upon the Common Elements shall be removed, changed, replaced or modified, whether by repair, maintenance or restoration, in such a manner so as to alter the visual appearance thereof without the prior written consent of the Board. Furthermore, no Owner, or their guests or invitees, shall erect, store, maintain or construct anything upon the General Common Elements except upon the written consent of the Board.

- 9.2.3 No alteration or conversion of the Common Elements to the exclusive use of less than all of the Owners shall occur without the prior written consent of the Board, and then only if such alteration or conversion does not, in the Board's reasonable judgment materially affect the rights of any Owner in and to such other Owner's Unit and the Common Elements. The Board shall have the right to open judgment on any such question to a vote of the membership of the Association in which vote a majority of the Allocated Interest shall govern.

9.3 Use of Limited Common Elements.

- 9.3.1 The Limited Common Elements shall be solely used by the Owners in such a fashion to be consistent with the character and visual appearance of the Condominium Project. No Owner shall obstruct, or store such Owner's personal property, on any part of a Limited Common Element reserved for the use of more than one Owner, without the consent of the other Owners having the use of such Limited Common Elements.

- 9.3.2 All plantings and personal property of the Owners kept, maintained or used upon the Limited Common Elements shall be consistent with the character and visual appearance of the Project.

- 9.3.3 No Common Element shall be enclosed or covered by any permanent improvement, structure or device without the prior written consent of the Board, and then only if such enclosure or covering does not, in the Board's reasonable judgment, materially affect the rights of any owner in and to such Owner's Unit. The Board shall have the right to open judgment on any such question to a vote of the membership of the Association in which vote a majority of the Allocated Interest shall govern.

9.4 Prohibition of Damage and Certain Other Activities.

- 9.4.1 Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or which would result in an increase in the rate of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board.
- 9.4.2 Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority.
- 9.4.3 No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner, or any guest or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all such losses resulting from any damage or waste caused by him or his guests or invitees.
- 9.4.4 No noxious, destructive, boisterous or offensive activity shall be carried on in any Unit or on or in the Common Elements or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any other person at any time lawfully occupying the Project. The Board shall have sole and absolute discretion in determining whether any activity shall be noxious, destructive, boisterous or offensive. The Board has the authority to open judgment upon such question to a vote of the membership of the Association in which case the vote of a majority of the Allocated Interest shall govern. Evening deliveries to any Unit shall not constitute a violation of this section and shall be allowed.
- 9.4.5 The Association may by rule or regulation prohibit or limit the raising, breeding or keeping of animals, livestock, or poultry in any Unit or on the Common Elements or any part thereof, except that the operation and maintenance of a retail pet store or veterinarian clinic (not including boarding facilities) shall be permitted.
- 9.4.6 Signage may be constructed only as permitted by applicable zoning ordinances.
- 9.4.7 No clotheslines, antennas, telecommunications dishes or devices, wiring or installation of air-conditioning or other machines shall be installed on the exterior of the Building, or be allowed to protrude through the walls, the windows or the roof of the Buildings, unless the prior written approval of the Board is first obtained; provided, however, the foregoing shall not be construed to prohibit mechanical systems integral to the operation of a Building or the business of any Unit Owner from being located on the roof thereof or antenna or other communication devices to be placed on the roofs of Buildings if permitted by law.

9.5 Parking and Storage of Vehicles and Personal Property. Parking spaces located on the Property are designated as either General Common Elements or Limited Common

Elements on the Condominium Map and shall be administered by the Association. The parking spaces may not be converted from General or Limited Common Elements without the written approval of the Unit affected and the prior written approval of the Town of Carbondale.

9.5.1 The Board may regulate, restrict the parking of, and allocate General Common Element parking spaces to the Owners, Unit occupants, employees, and customers, and otherwise limit use of the same so as to provide adequate parking within the Project. Notwithstanding anything herein contained to the contrary, all parking spaces, whether or not designated a Limited Common Element assigned to a particular Unit, 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 well evident.

9.5.2 Subject to the provisions of Sections 9.2 and 9.3 above, all personal property of the Owners, or their customers, employees or invitees, not kept or stored within a Unit, and except for approved personal property kept or maintained on Limited Common Elements, shall be kept or stored in storage areas designated on the Condominium Map, if any, or provided by the Association for such purpose, if any. No exposed storage shall be permitted anywhere on the Project without the written consent of the Board.

9.6 Garbage and Trash. Garbage, rubbish and trash shall not be allowed to accumulate on the Project and shall be placed and kept in covered containers and trash bins, receptacles, dumpsters or compactors designated therefore in the area as shown on the Map, if any.

9.7 Enforcement. Without limiting any Owner or the Association in any proceeding at law or in equity to enforce any term or provision of this Declaration, specifically including the restrictions contained in this Article IX, the following enforcement remedies shall be allowed:

9.7.1 Each Owner shall be personally liable for any negligence by such Owner, or such Owner's Unit occupants or employees, causing loss or damage to the Common Elements. The Association may levy a special assessment against such Owner for such losses or damages, and collect and recover the same against such Owner in the same manner as any other special assessment may be collected or recovered as provided in Article VIII of this Declaration.

9.7.2 The Association may on behalf of all Owners, or any Owner may on behalf of such Owner, commence and maintain any legal proceeding at law or in equity for the purpose of recovering damages for, or abating or enjoining, any violation of this Article IX. In such legal proceedings, the Association shall on behalf of all Owners, or any Owner shall on behalf of such Owner, be entitled to recover their legal costs and expenses incurred for such legal proceedings, including reasonable attorneys' fees.

9.8 Condominium Ownership

Section 9.8.1. 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 9.8.2. 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.

Section 9.8.3. 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 for the exclusive use of his Unit or as appurtenant to his Unit.

Section 9.8.4. Every conveyance, transfer, gift, devise, encumbrance, or other disposition of a Unit, or any part thereof, 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.

9.9 Mixed Use Disclosure. Purchaser acknowledges The Property is located in a mixed use area. The Property is located in an urban setting, and as such any purchasers' enjoyment of same maybe subject to or impacted by matters not necessarily associated with a residential setting such as high density development including affordable housing, the presence of retail, office, commercial, industrial and other high impact uses in close proximity. Impacts may include higher traffic, both vehicular and pedestrian, increased levels of activity, noise, light and similar impacts, potential impacts of adjacent developments on light, air and view corridors, limitations on parking, security issues and other similar issues. Purchasers waive any and all claims against the Declarant arising directly or indirectly from any of the foregoing whether the result of the Declarant's conduct or of any other party.

ARTICLE X COMMON ELEMENTS ADDITIONS, MODIFICATIONS, NON-STRUCTURAL PARTITION WALLS, ETC.

10.1 No additions, modifications, improvements, alterations, or other construction, in, upon or to the Common Elements shall be commenced, erected or maintained, nor shall any exterior addition or change to the Building be made, until the plans and specifications showing the nature, kind, shape, height, materials and location shall have been first submitted to and approved in writing by the Board, as to the harmony of external design, consistency with this Declaration, and location in relation to the Buildings and topography. In addition, the Board shall have the authority to examine and approve personal property kept or maintained on the Limited Common Elements to insure consistency of the same with the external design and color of the Buildings and character of the Condominium Project. This Article X shall be supplemental of the provisions of Article IX hereof, and not exclusive thereof. The Board shall not have any liability to any person or Owner submitting requests for approval by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to any request, examination or consent.

ARTICLE XI INSURANCE

11.1 Types of Insurance. The Association, through the Board, shall obtain and keep in full force and effect at all times the insurance coverage described below to be provided by companies authorized to do business in the State of Colorado. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to the insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time. In order to facilitate the providing and maintaining of adequate and proper insurance, it is contemplated that Declarant may contract for insurance coverage covering the Project as contemplated by this Article XI prior to or concurrently with the first conveyance of a Condominium Unit and any obligations or commitments for the payment of premiums or expenses otherwise incurred by Declarant under any such blanket policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of any Condominium Units, shall become an obligation of the Association and shall be paid for out of Association funds.

11.1.1 Casualty Insurance. The Association shall obtain, and keep in full force and effect, fire and extended coverage casualty insurance on the Building including the Units and Common Elements for the amount of the maximum insurable value thereof.

11.1.2 Public Liability and Property Damage Insurance. The Association shall obtain and keep in full force and effect at all times a comprehensive policy of public liability insurance covering all of the Common Elements in the Project as the Association deems reasonable and necessary. Such coverage may include, without limitations on liability for personal injury, water damage, contractual relations, operation of automobiles on behalf of the Association and activities in connection with the ownership, operation, maintenance and other use of the Common Elements. Such insurance policies may contain a "severability of interest" 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.

11.1.3 Workers' Compensation and Employer's Liability Insurance. The Association shall purchase workers' compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by applicable law.

11.2 Optional Insurance. The Association may obtain the following types of insurance coverage, but is not required to do so:

11.2.1 Personal Property Casualty Insurance. The Association may in its discretion obtain insurance on the personal property and furnishings owned by the Association in amounts equal to the replacement cost less depreciation in the event of damage or destruction from casualties against which such insurance is obtained.

- 11.2.2 Fidelity Insurance. The Association may purchase fidelity coverage against dishonest acts on the part of the Directors, Managers, Trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. If purchased, the fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- 11.2.3 Other. The Association may obtain insurance against such other risks, as it may deem appropriate with respect to the Condominium Project, including any personal property of the Association located thereon.
- 11.3 Owner's Responsibility. The Owners of Condominium Units may separately insure the improvements to their Units for casualty and against public liability and property damage as they may separately determine in their discretion. Such insurance shall be obtained by each Owner separately without involvement of the Association. Regardless of whether or not such insurance coverage is obtained, each Owner agrees to indemnify and hold all other Owners harmless from any loss or liability to other Owners arising from or in connection with any casualty or public liability or property damage caused by the indemnifying Owner or such Owner's Unit's occupants, tenants and their employees, customers and invitees.
- 11.4 Form.
- 11.4.1 Each required policy must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located providing that any proceeds shall be paid to the Association for the use and benefit of the Mortgagees as their interests may appear.
- 11.4.2 The Mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named therein at least ten (10) days in advance of the effective date of any reduction in or cancellation of such policy.
- 11.4.3 Each casualty insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holders rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the State of Colorado.
- 11.5 Common Elements Insurance Proceeds. The Association shall receive and administer the proceeds of any property casualty insurance payments received under policies obtained by it and maintained by it pursuant to this Article insuring the Common Elements. The Association shall apportion the proceeds to the parts of the Common Elements, which have been damaged. To the extent that reconstruction is required, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there

is a determination that the damaged parts of the Common Elements shall not be rebuilt, the proceeds shall be distributed to each of the Owners of the Common Elements in accordance with their respective Allocated Interests therein, with joint payments being made to the Owner and the Mortgagees where the Association has written notice of the existence of a Mortgage. Each Owner, Declarant, and each Mortgagee shall be bound by the apportionment's of damage and of the insurance proceeds made by the Association pursuant hereto.

- 11.6 Insurance Proceeds for Condominium Units. The Association shall receive and administer the proceeds of any property casualty insurance payments received under policies obtained by it and maintained by it pursuant to this Article insuring the respective Condominium Units. The Association shall apportion such proceeds to the parts of the Common Elements of the Unit, which have been damaged. To the extent reconstruction is required, the proceeds shall be used for such purpose. To the extent that reconstruction is not required and there is a determination that the damaged parts of the Common Elements of the Condominium Unit shall not be rebuilt, the proceeds shall be distributed to each of the Owners of the damaged portion in accordance with their respective interests therein, with joint payments being made to the Owner and Mortgagees where the Association has written notice of the existence of a Mortgage. Each Owner, Declarant, and each Mortgagee shall be bound by the apportionment of damage and to the insurance proceeds made by the Association pursuant thereto.

ARTICLE XII CASUALTY DAMAGE OR DESTRUCTION OF COMMON AREA

- 12.1 Affects Title. Title to each Condominium Unit is hereby made subject to the terms and conditions hereof, which bind Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Condominium Unit.
- 12.2 Association as Agent. Declarant and all of the Owners and all Mortgagees who acquire any interest in the Project irrevocably constitute and appoint the Association their true and lawful agent in their name, place and stead for the purpose of managing the Common Elements upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute appointment of the attorney in fact herein provided.
- 12.3 General Authority of Association. As attorney in fact, the Association shall have irrevocable full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Condominium Unit Owner and such Owner's Mortgagee in Common Elements which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the Common Elements as used in the succeeding subparagraphs mean restoring the Common Elements to substantially the same condition in which it existed prior to damage. The proceeds of any insurance of the Association collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners and their first Mortgagees unanimously agree not to rebuild.
- 12.4 Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the Common Elements, the Association shall obtain reliable

and complete estimates of the costs of repair or reconstruction of that part of the Common Elements damaged or destroyed.

- 12.5 Repair or Reconstruction. As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Common Elements damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of square feet and parking spaces may not vary by more than five percent (5%) from the original construction.
- 12.6 Funds for Reconstruction. If the proceeds of any insurance collected are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article VIII hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such special assessment shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.
- 12.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 12.6 shall constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; and, if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made, or would have made had there been an assessment or assessments pursuant to Section 12.6 of this Declaration.

ARTICLE XIII CONDEMNATION

- 13.1 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.
- 13.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.
- 13.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in accordance with the Condemnation Award. If the Condemnation Award does not apportion the damage then the apportionment shall be allocated by an independent MAI appraiser to be obtained by the Association for the purpose of determining the respective values of the Units and their interest in the Common Elements and allocating the Condemnation Award among such Owners.

On the basis of the principal set forth in the last preceding paragraph, the Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. The Association shall distribute the Condemnation Award as soon as practicable thereafter to the parties in the shares so determined such distribution to be made by checks payable jointly to the respective Owners and their respective Mortgagees.

- 13.4 Partial Taking. In the event that less than the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: as soon as practicable, the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among all Owners in proportion to their percentage interests in Common Elements, (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association, shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.
- 13.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association and/or any applicable sub-association. Thereafter, the Association shall reallocate the Allocated Interests in the Common Elements and percentage vote determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided in Article XII hereof.
- 13.6 Reconstruction and Repair. Any reconstruction and repair of the Common Elements necessitated by the condemnation shall be governed by the procedures specified in Article XII hereof.

ARTICLE XIV REVOCATION OR AMENDMENT TO DECLARATION AND PLAT, TERMINATION OF CONDOMINIUM

- 14.1 Declarant reserves the right to make amendments, modifications, additions or deletions in or to this Declaration as may be required by a mortgage lender or insurer, provided that such modifications, additions or deletions made at the instance of Declarant will not result in material physical modifications of Building or improvements of the Project, and

any such changes will not decrease the financial obligations of Declarant as a Unit Owner. Except for rights of modification reserved to Declarant as set forth in the preceding sentence, and as shall be occasioned by the combination or subdivision of Condominium Units, or as shall otherwise be provided for herein, this Declaration shall not be revoked nor shall any of the provisions herein be amended, nor shall the Condominium ownership hereby created be terminated, unless the Owners representing eighty (80%) percent, of the allocated interest, as reflected on the real estate records of Garfield County, Colorado, consent and agree to such revocation, amendment or termination by instruments duly recorded. Any revocation, amendment or termination meeting the requirements hereof shall be binding upon each Owner and each Condominium Unit regardless of whether the burdens thereon are increased or decreased by such amendment.

ARTICLE XV PERIOD OF CONDOMINIUM OWNERSHIP

- 15.1 The Condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration and any amendments thereto are revoked in the manner provided in Article XIV of this Declaration or until terminated in the manner provided in Article XIII (Condemnation).

ARTICLE XVI EASEMENTS

- 16.1 Recorded Easements. The Property shall be subject to all easements as shown on any Map or plat, those of record, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.
- 16.2 Utility and Drainage Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities and drainage systems, including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.
- 16.3 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common

- Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for guest parking, storage and closure for repairs and maintenance.
- 16.4 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.
- 16.5 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Unit, does irrevocably constitute and appoint the Association with full power of substitution in the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights granted to the Association with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association may consider necessary or advisable to give effect to the provisions of this Article and this Declaration generally. If requested to do so by the Association, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

ARTICLE XVII MISCELLANEOUS

- 17.1 Compliance with Provisions of Declaration and Articles of Incorporation and Bylaws of the Association. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, damages or injunctive relief or both, costs and expenses of such proceeding and all reasonable attorneys' fees. Such action shall be maintainable by the Association on behalf of all of the Owners, or, in a proper case, by an aggrieved Owner.
- 17.2 Registration of Mailing Address, Notices. Each Owner shall register such Owner's mailing address with the Association and all notices, requests or demands intended to be served upon any Owner, except for budget statements, notices of meetings and other routine notices, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. Unless otherwise provided herein, budget statements, notices of meetings and other routine notices may be sent by regular mail postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, requests or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in its Articles of Incorporation or Bylaws. All notices, requests or demands to be served on Mortgagees pursuant hereto shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for in this section.

- 17.3 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that it may have conveyed said interest as provided herein, but the Owner of a Condominium Unit shall have no obligation for expenses or other obligations accruing after such Owner conveys such Condominium Unit.
- 17.4 Transfer of Declarant's Rights. Any rights or interests reserved hereby to Declarant may be transferred or assigned by Declarant.
- 17.5 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provisions, paragraph, sentence, clause, phrase or word in any other circumstances shall be not affected thereby.
- 17.6 Rule Against Perpetuity. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such options, privileges, covenants or rights shall be deemed to remain in effect only for the maximum permissible period permitted by law.
- 17.7 Statute. The provisions of this Declaration shall be in addition and supplemental to the applicable provisions of Colorado law.
- 17.8 Right of First Refusal. Nothing contained herein shall be deemed to create a right of first refusal on the part of the Association or any Owner to purchase any Condominium Unit from any Owner.
- 17.9 Distributions of Proceeds. Notwithstanding anything to the contrary in this Declaration, or the Articles or Bylaws of the Association, no provision of this Declaration, Articles or Bylaws of the Association, shall give a Condominium Unit Owner, or any other party, priority over any rights of the first Mortgagee of the Condominium Unit pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for loss to or taking of Condominium Units and/or Common Elements.
- 17.10 Restrictions on Alienation. Nothing contained in this Declaration shall constitute a restriction upon the sale, lease, restraint or free alienability of any Condominium Unit by the Owner thereof.
- 17.11 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- 17.12 Applicability. This Declaration shall be binding upon the undersigned, their successors, grantees and assigns.

17.13 Governing Clause. The provisions of this Declaration, as amended and restated herein, shall supersede and govern any conflicting term or provision of the previously recorded Declaration.

ARTICLE XVIII USE AND OCCUPANCY RESTRICTIONS

18.1 Single Family Restriction. The use and occupancy of each residential Unit shall be restricted to one single-family dwelling unit. In addition, each Unit may have up to two additional individual renters; however in no case shall more than two individuals occupy one bedroom.

18.2 Designated Use. There are four Residential units defined as Units R1, R2, R3 and R4. There are ten commercial units defined as Units C1, C2, C3, C4, C5, C6, C7, C8, C9 and C10. An owner shall not change or expand the designated use of any unit without the approval of the Town of Carbondale and the Association. A commercial unit shall not be used for residential purposes nor shall a residential unit be used for commercial purposes inconsistent with Town zoning or this Declaration without the approval of the Town of Carbondale and the Association.

THIS DECLARATION is executed as of the 12 day of September, 2007.

DECLARANT:

CLEAVER + EDELMAN LAND PLANNING AND DEVELOPMENT NO. 1, LLC,
a Colorado Limited Liability Company

By: Caleb Edelman
Caleb Edelman, Manager

STATE OF COLORADO)
)ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 12th day of September 2007, by Caleb Edelman, Manager, Cleaver + Edelman Land Planning and Development No. 1, LLC.

WITNESS MY HAND AND OFFICIAL SEAL

My commission expires: March 28, 2009

Crystal Verdeja
Notary Public

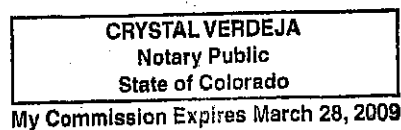


EXHIBIT "A"
ALLOCATED INTERESTS

Unit Number	Address	Square Footage	Ownership Percentage In Association	Assessments Percentage of Common Expenses	Voting Rights Weighted Percentage
C - 1	1901 Delores Way	1061	7.992	7.992	7.992
C - 2	1909 Delores Way	893	6.727	6.727	6.727
C - 3	1917 Delores Way	1025	7.720	7.720	7.720
C - 4	1925 Delores Way	889	6.697	6.697	6.697
C - 5	1933 Delores Way	1026	7.729	7.729	7.729
C - 6	1941 Delores Way	897	6.757	6.757	6.757
C - 7	1949 Delores Way	1028	7.744	7.744	7.744
C - 8	1913 Delores Way	891	6.712	6.712	6.712
C - 9	1929 Delores Way	885	6.667	6.667	6.667
C - 10	1945 Delores Way	868	6.539	6.539	6.539
R - 1	1905 Delores Way	947	7.134	7.134	7.134
R - 2	1921 Delores Way	959	7.224	7.224	7.224
R - 3	1937 Delores Way	946	7.126	7.126	7.126
R - 4	1953 Delores Way	<u>960</u>	<u>7.232</u>	<u>7.232</u>	<u>7.232</u>
TOTALS		13,275	100.000	100.000	100.000

(Square footage measured from the inside of interior walls)