



**DECLARATION OF CONDOMINIUM
FOR
MOUNTAINEER SQUARE**

THIS DECLARATION OF CONDOMINIUM FOR MOUNTAINEER SQUARE (this "Declaration") dated as of April 3, 2007, shall be effective upon recordation and is made by MT. CB REAL ESTATE, LLC, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Gunnison County, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property"). Declarant hereby makes the following grants, submissions and declarations for the Property:

ARTICLE 1 IMPOSITION OF COVENANTS

Section 1.1 Purpose. The purpose of this Declaration is to create a mixed use condominium project (the "Project" or "Mountaineer Square") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act"), within the Building(s) (as hereinafter defined) and other improvements located on the Property, which Project shall incorporate residential, commercial, meeting and conference, and parking uses (that part of the Project to be used for residential purposes being referred to as the "Residential Project", that part of the Project to be used for commercial purposes being referred to as the "Commercial Project", that part of the Project to be used for meeting and/or conference facility purposes being referred to as the "Conference Facility Project" and that portion of the Project to be used for parking purposes being referred to as the "Parking Project").

Section 1.2 Residential Units. The Residential Project shall consist of Residential Units (hereinafter defined) and the Limited Common Elements-Residential (hereinafter defined).

Section 1.3 Commercial Units. The Commercial Project shall consist of Commercial Units (hereinafter defined) and the Limited Common Elements-Commercial (hereinafter defined).

Section 1.4 Conference Facility Units. The Conference Facility Project shall consist of the Conference Facility Unit or Units (hereinafter defined) and the Limited Common Elements-Conference Facility (hereinafter defined).

Section 1.5 Parking Units. The Parking Project shall consist of the Parking Unit or Units (hereinafter defined) and the Limited Common Elements-Parking (hereinafter defined).

Section 1.6 Intention of Declarant. Declarant desires to (a) establish a uniform plan for the development, sale, ownership, use and maintenance of the Property including parking, meeting and conference, commercial and residential uses; (b) protect the value and desirability of the Project as a whole while respecting the separate and distinct interests of the owners of each of the Residential Project, the Commercial Project, the Conference Facility Project and the Parking Project; (c) further a plan for the improvement, sales and condominium ownership of the Project; (d) create a harmonious and attractive mixed use development within the Project; and (e) promote and safeguard the health, comfort, safety, convenience and welfare of the owners of condominium units in the Project.

Section 1.7 Development and Use. As of the recording of this Declaration, the Project consists of one hundred forty-two (142) Units, of which ninety-five (95) are Residential Units, forty-five (45) are Commercial Units, One (1) is a Conference Facility Unit, and one (1) is a Parking Unit.

Section 1.8 Mixed Use. The Residential Project, the Commercial Project, the Conference Facility Project and the Parking Project together shall comprise the condominium project, the name of which is Mountaineer Square. The functions, activities, physical appearance and other features commonly associated with parking facility uses, meeting and conference facility uses, commercial uses and residential uses shall be expressly permitted on the Property and within the Building(s) and other improvements, all as more particularly described and governed herein.

Section 1.9 Submission of Property. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied and improved, subject to the provisions of this Declaration.

Section 1.10 Master Declaration. The Property is subject to the Community Declaration for Mt. Crested Butte Town Center dated February 23, 2007, and recorded February 28, 2007, under Reception No. 573262 in the Office of the Clerk and Recorder of Gunnison County, Colorado (the "Master Declaration") and the PUD Plat of Town Center South Village P.U.D., recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado, on August 12, 2005 at Reception No. 556853 (the "PUD Plat") and the PUD III Guide recorded August 12, 2005, at Reception No. 556861, as amended by the First Amendment recorded December 15, 2006 at Reception No. 571679 ("PUD Guide").

Section 1.11 Covenants Running with the Land. All provisions of this Declaration shall be deemed to be covenants running with the land or equitable servitudes, as the case may be. The benefits, burdens and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context shall expressly provide otherwise:

Section 2.1 "Allocated Interest" means the interest allocated to each Unit expressed as a percentage as set forth in Exhibit B attached hereto and incorporated herein by reference. Allocated Interests govern voting rights, assessment obligations and ownership interests for all Units. The formula for calculating each Unit's Allocated Interest is described on Exhibit B.

Section 2.2 "Allocated Interest-Commercial" means, with respect to any Commercial Unit, the Allocated Interest allocated to such Commercial Unit as set forth on Exhibit B, attached hereto and incorporated herein by reference divided by the total of Allocated Interests allocated to all Commercial Units in the Association from time to time.

Section 2.3 "Allocated Interest-Conference Facility" means, with respect to any Conference Facility Unit, the Allocated Interest allocated to such Conference Facility Unit as set forth on Exhibit B, attached hereto and incorporated herein by reference, divided by the total of Allocated Interests allocated to all Conference Facility Units in the Association from time to time.

Section 2.4 "Allocated Interest-Parking" means, with respect to any Parking Unit, the Allocated Interest allocated to such Parking Unit as set forth on Exhibit B, attached hereto and



incorporated herein by reference, divided by the total of Allocated Interests allocated to all Parking Units in the Association from time to time.

Section 2.5 “Allocated Interest-Residential” means, with respect to any Residential Unit, the Allocated Interest allocated to such Residential Unit as set forth on Exhibit B, attached hereto and incorporated herein by reference, divided by the total of Allocated Interests allocated to all Residential Units in the Association from time to time.

Section 2.6 “Assessments” means the annual, special, and default Assessments levied pursuant to ARTICLE 8 below. Assessments are also referred to as a Common Expense Liability under the Act.

Section 2.7 “Association” means Mountaineer Square Condominium Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 2.8 “Association Documents” means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the articles of incorporation and bylaws of the Association, the Map and any procedures, rules, regulations or policies relating to the Project adopted under such documents by the Association or the Executive Board.

Section 2.9 “Building(s)” means the building or buildings (including all fixtures and improvements contained within it or them) in which Units and Common Elements are located.

Section 2.10 “Category” shall mean each separate category of members in the Association, namely the Residential Owners, the Commercial Owners, the Conference Facility Owners and the Parking Owners (all as described in Section 6.2 of this Declaration), and “Categories” shall mean all such categories collectively. The term shall also refer to the respective Categories of Units as well as the respective Categories of Directors that serve on the Executive Board.

Section 2.11 “Commercial Directors” means the members of the Executive Board elected by the Commercial Owners after the expiration of the Declarant Control Period in accordance with the procedures set forth below and in the bylaws of the Association. After the expiration of the Declarant Control Period there shall be two (2) Commercial Directors.

Section 2.12 “Commercial Owners” means those Owners of Commercial Units within the Project.

Section 2.13 “Commercial Unit” means a Unit designated with the prefix “C” on the Map and having a commercial use, and not the Conference Facility Units, Residential Units or Parking Units.

Section 2.14 “Common Elements” means all of the Project, except the Individual Air Space Units, and including, without limiting the generality of the foregoing, the following components:

2.14.1 The Property, excluding improvements on the Property unless specifically described in this Section 2.14;

2.14.2 The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, common fireplaces (not within any Individual Air Space Unit), chimneys, flues, chimney chases, patios, decks, balconies, corridors, lobbies, vestibules, entrances and exits; and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer and heating which exist for use by one or more of the Owners, including the pipes, vents, ducts,



flues, cable conduits, wires, telephone wire and other similar utility installations used in connection therewith and the areas designated on the Map as including those installations; trash rooms and storage rooms; elevators and stairs; all exterior windows, window glass, window frames and shutters; exterior awnings; doorsteps and stoops; and any doors providing access to an Individual Air Space Unit from any Common Element (but not any doors wholly within any Individual Air Space Unit) as well as any glass and door frames of such doors), except for the Individual Air Space Units;

2.14.3 The plazas, yards, sidewalks, walkways, parking areas, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens and related facilities upon the Property; provided, however, that certain rights and obligation with respect to certain of these Common Elements shall exist with the Master Association as Master Common Area as further described and provided herein and in the Master Association Documents;

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

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

The Owners of the separate Units shall own the Common Elements, each Owner of a Unit having an undivided interest in the Common Elements as provided below. Notwithstanding the foregoing definition of the Common Elements, it is acknowledged that a substantial portion of the Common Elements shall be identified on the Map as Master Common Area and therefore subject to an easement in favor of the Master Association. Such Master Common Area shall be subject to certain public use rights as provided in the PUD Guide, and shall be subject to the control of the Master Association.

Section 2.15 “Common Expense(s)” means and includes the following:

2.15.1 Expenses of administration, insurance, operation and management, repair or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as delineated in Section 9.2 below;

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

2.15.3 All sums lawfully assessed against the Units by the Executive Board;

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

2.15.5 Expenses provided to be paid by the Residential Owners, the Commercial Owners, the Conference Facility Owners, and the Parking Owners collectively or respectively in accordance with the terms of this Declaration pursuant to the Management Agreement(s) for the maintenance of the General Common Elements, the Limited Common Elements-Residential, the Limited Common Elements-Commercial, the Limited Common Elements-Conference Facility, and/or the Limited Common Elements-Parking.

Section 2.16 “Community-Wide Standard” means the standard of conduct, maintenance or other activity generally prevailing within Mt. Crested Butte Town Center, or the minimum standards established by the Design Guidelines and the rules and regulations of the Master Association, whichever

is the highest standard. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Mt. Crested Butte Town Center change.

Section 2.17 “Condominium Map” or “Map” means and includes any engineering survey or surveys of the Property as provided in ARTICLE 4, below.

Section 2.18 “Conference Facility Directors” means the members of the Executive Board elected by the Conference Facility Owners after the expiration of the Declarant Control Period in accordance with the procedures set forth below and in the bylaws of the Association. After the expiration of the Declarant Control Period there shall be two (2) Conference Facility Directors.

Section 2.19 “Conference Facility Owners” means those Owners of Conference Facility Units within the Project.

Section 2.20 “Conference Facility Unit” means a Unit designated with the prefix “CF” on the Map and having a meeting and/or conference facility use, and uses related thereto, and not the Parking Units, Residential Units or Commercial Units.

Section 2.21 “Declarant” means Mt. CB Real Estate, LLC, a Colorado limited liability company, and its successors, transferees and assigns which are Successor Declarants. No party other than Mt. CB Real Estate, LLC, shall exercise the rights and privileges reserved herein to Declarant, or be deemed a successor, transferee or assignee of Declarant rights, unless such party shall receive and record in the Office of the Clerk and Recorder of Gunnison County, Colorado, a written instrument from Mt. CB Real Estate, LLC, or any Successor Declarant, assigning or transferring all or a portion of such rights and privileges.

Section 2.22 “Declarant Control Period” means the period of time commencing on the date of incorporation of the Association and terminating on the earliest of the following events: (i) sixty (60) days after conveyance by Declarant of seventy-five percent (75%) of the Units to Owners other than Declarant, (ii) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, (iii) two (2) years after any right to add new Units to the Project was last exercised by Declarant, or (iv) the date on which Declarant voluntarily relinquishes such power evidenced by a notice recorded in the Office of the Clerk and Recorder for Gunnison County, Colorado.

Section 2.23 “Declaration” means this Declaration of Condominium for Mountaineer Square together with any supplement or amendment to this Declaration, recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado.

Section 2.24 “Development Property” means that certain property described on the Map as Development Property in which Declarant has reserved development rights and in which Declarant has special Declarant rights as further set forth in Subsection 22.2.2 hereof.

Section 2.25 “Director” means a member of the Executive Board.

Section 2.26 “Executive Board” means the governing body of the Association, as provided in this Declaration and in the articles of incorporation and bylaws of the Association.

Section 2.27 “Expansion Property” means (i) the real property more particularly described on Exhibit C attached hereto and incorporated herein, and (ii) the Development Property, all of which Declarant may subject to this Declaration by one or more duly recorded Supplemental Declarations and Supplemental Maps.

Section 2.28 "First Mortgage" means a mortgage which has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments) and liens of other associations.

Section 2.29 "First Mortgagee" means the Mortgagee under a First Mortgage.

Section 2.30 "Guest" means any family member, customer, agent, employee, independent contractor, guest, licensee or invitee of an Owner or Lessee and any person or persons, entity or entities who have any right, title or interest in a Unit which is not the fee simple title to the Unit (including a Lessee), and any family member, customer, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.

Section 2.31 "General Common Elements" means the Common Elements, except for Limited Common Elements.

Section 2.32 "Individual Air Space Unit" means, with respect to a Residential Unit or a Commercial Unit, that portion of a single Unit designated for separate ownership by an Owner depicted on the Map and consisting of enclosed rooms and bounded by the interior face of the unfinished perimeter walls, ceilings, and floors of the Individual Air Space Unit; provided, however, some Commercial Unit(s) may not be bounded on all sides by walls, in which case the boundaries on such sides of an Individual Air Space Unit(s) shall be those boundaries as are designated on the Map. With respect to a Parking Unit, the Individual Air Space Unit shall be that individual air space designated on the Map for separate ownership. The side boundaries of the Parking Units shall be the vertical planes extending from the unfinished perimeter floor to the unfinished perimeter ceiling, which, in turn, shall be the upper and lower boundaries of the Parking Units. For the purpose of defining an Individual Air Space Unit, the terms set forth below shall be defined as follows:

2.32.1 "unfinished perimeter wall" means the interior surfaces of the studs, supports and other wooden, metal or similar structural materials which constitute the interior face of a wall of an Individual Air Space Unit.

2.32.2 "unfinished perimeter ceiling" means the beams, joists and concrete or wooden or other structural materials that constitute the interior face of the ceiling of an Individual Air Space Unit.

2.32.3 "unfinished perimeter floor" means the beams, floor joists and floor deck material that constitute the interior face of the floor of an Individual Air Space Unit.

An Individual Air Space Unit shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting or any other wall, ceiling or floor covering. An Individual Air Space Unit shall also include any fireplace or stove hearth, facing brick, tile or firebox. An Individual Air Space Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings and floors. An Individual Air Space Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical or other utility services to the Individual Air Space Unit and located within the unfinished perimeter walls, ceilings and floors; provided, however, that an Individual Air Space Unit shall not include any of the structural components of the Building or utility or service lines located within the Individual Air Space Unit but serving more than one Individual Air Space Unit. Further, an Individual Air Space Unit shall not include any exterior windows or doors, as same are General Common Elements as provided in Section 2.14.

Section 2.33 "Lessee" means the person or persons, entity or entities, who is the lessee under a lease of all or any part of a Unit. The term Lessee shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee, but it shall not include the Association.

Section 2.34 "Limited Common Elements" means those parts of the Common Elements that are limited to and reserved for the use of fewer than all of the Owners. Limited Common Elements that are reserved for the exclusive use of any or all Residential Owners are defined as "Limited Common Elements-Residential" or "LCE-R" on the Map. Limited Common Elements that are reserved for the exclusive use of any or all Parking Owners are defined as "Limited Common Elements-Parking" or "LCE-P" on the Map. Limited Common Elements that are reserved for the exclusive use of any or all Conference Facility Owners are defined as "Limited Common Elements-Conference Facility" or "LCE-CF" on the Map. Limited Common Elements that are reserved for the exclusive use of any or all Commercial Owners are defined as "Limited Common Elements-Commercial" or "LCE-C" on the Map. Limited Common Elements-Commercial include the storefronts of Commercial Units located on the ground floor extending the width and height of the Commercial Unit to which they are appurtenant, all as may be further defined on the Map. Without limiting the foregoing, the Limited Common Elements shall include any storage spaces that may be designated as Limited Common Elements serving those particular Individual Air Space Units, and any individual fireplace chimneys and flues, and individual water and sewer service lines, water heaters and any plumbing or other installation or item servicing an Individual Air Space Unit, including, but not limited to, all such items designated as Limited Common Elements on the Map. No reference to the limited use by individual Owners need be made in any instrument of conveyance, encumbrance or other instrument. It is expressly acknowledged that all balconies, decks, patios and porches adjacent to an Individual Air Space Unit are General Common Elements, not Limited Common Elements, unless same are expressly designated as Limited Common Elements appurtenant to any Unit(s) or Category(ies) of Units on the Map.

Section 2.35 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance and management of the Project.

Section 2.36 "Managing Agent" means a person, firm, corporation or other entity employed or engaged as an independent contractor by the Association pursuant to a Management Agreement to perform management services for the Project.

Section 2.37 "Master Association" means the Mt. Crested Butte Town Center Community Association, created by the Master Association Documents.

Section 2.38 "Master Association Documents" means the Master Declaration and the articles of incorporation and bylaws of the Master Association, and any procedures, rules and regulations and policies adopted under such documents by the Master Association.

Section 2.39 "Master Common Area" means those portions of the Project identified on the Map as "Master Common Area" or which may be designated by the Executive Board in the future as Master Common Area, and in which the Master Association has rights and obligations created by easement, license, ownership or otherwise, and all as more particularly described in Section 5.4 below.

Section 2.40 "Master Declaration" means the Community Declaration for Mt. Crested Butte Town Center, dated February 23, 2007, as recorded February 28, 2007, at Reception No. 573262 in the Office of the Clerk and Recorder of Gunnison County, Colorado, as further amended and supplemented from time to time.



Section 2.41 "Maximum Rate" shall mean the amount determined from time to time by action of the Executive Board, but not to exceed the lesser of eighteen percent (18%) per annum or three percentage points greater than that rate of interest charged by a bank designated from time to time by the Executive Board to the best commercial customers of the designated bank for short-term loans and identified as the "prime rate" by such bank as of the date, or if less, the maximum rate allowed by law. If the Executive Board has not determined the Maximum Rate, the Maximum Rate shall be eighteen percent (18%) per annum.

Section 2.42 "Mortgage" means any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado, which secures financing for the construction or development of the Project or which encumbers a Unit.

Section 2.43 "Mortgagee" means any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.44 "Mt. Crested Butte Town Center" means all of the real property subject to the Master Declaration.

Section 2.45 "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons or an entity, of a fee simple title interest in and to any Unit; excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

Section 2.46 "Parking Agreement" means that certain Parking License Agreement dated April 6, 2007, by and among the Association and the Parking Owner, which was recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado, on April 6, 2007, as Reception No. 574197.

Section 2.47 "Parking Director" means the member of the Executive Board elected by the Parking Owners after the expiration of the Declarant Control Period in accordance with the procedures set forth below and in the bylaws of the Association. After the expiration of the Declarant Control Period there shall be one (1) Parking Director.

Section 2.48 "Parking Owners" means those Owners of Parking Units within the Project.

Section 2.49 "Parking Unit" means a Unit designated with the prefix "P" on the Map and having a vehicular parking use, and not the Conference Facility Units, Residential Units or Commercial Units.

Section 2.50 "Property" means the real property described in the attached Exhibit A.

Section 2.51 "PUD Guide" means that certain document titled "Mt. Crested Butte Town Center PUD III Guide" and recorded in the office of the Clerk and Recorder for Gunnison County, Colorado, on August 12, 2005, at Reception No. 556861, as amended by the First Amendment recorded December 15, 2006 at Reception No. 571679, and as further amended from time to time.

Section 2.52 "PUD Plat" means that certain final plat titled "Town Center South Village P.U.D." and recorded in the office of the Clerk and Recorder for Gunnison County, Colorado, on August 12, 2005, as Reception No. 556853, as amended from time to time, and shall include any subsequent subdivision final plat that shall affect any property within the PUD Plat from time to time.

Section 2.53 "Reserve Account" shall have the meaning given it in Section 7.3 hereinbelow.

Section 2.54 "Residential Directors" means the members of the Executive Board elected by the Residential Owners after the expiration of the Declarant Control Period in accordance with the procedures set forth below and in the bylaws of the Association. After the expiration of the Declarant Control Period there shall be two (2) Residential Directors.

Section 2.55 "Residential Owners" means those Owners of Residential Units within the Project.

Section 2.56 "Residential Unit" means a Unit not designated with a prefix on the Map and having a residential use, and not the Conference Facility Units, Commercial Units or Parking Units.

Section 2.57 "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both the assigning Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado, designating such party as a Successor Declarant. Upon such recording, the assigning Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

Section 2.58 "Supplemental Declaration" means an instrument which subjects any part of the Expansion Property to this Declaration, or creates additional Units upon any Development Property, as more fully provided in ARTICLE 22 below.

Section 2.59 "Supplemental Map" means a condominium map of the Project which depicts any part of the Expansion Property becoming subject to this Declaration, or which depicts additional Units upon any Development Property, through a Supplemental Declaration, as more fully provided in ARTICLE 22 below.

Section 2.60 "Unit" means, with respect to a Residential Unit, Commercial Unit, Conference Facility Unit or Parking Unit, the fee simple interest in and to an Individual Air Space Unit, together with the undivided interests in the Common Elements appurtenant to the Individual Air Space Unit. Each Unit's undivided interest in the Common Elements shall be equivalent to the Allocated Interest of such Unit with respect to the General Common Elements and each category of Limited Common Elements.

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

ARTICLE 3 DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1 Division into Units. As of the recording of this Declaration, the Property is hereby divided into one hundred forty-two (142) Units, of which ninety-five (95) are Residential Units, forty-five (45) are Commercial Units, one (1) is a Conference Facility Units and one (1) is a Parking Units. Each Unit consists of a fee simple interest in an Individual Air Space Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. In the event of expansion pursuant to the rights of Declarant reserved in ARTICLE 22 and/or by the resubdivision of Units, the maximum number of Units that can be created in the Project subject to any development limitations governing the Property as reflected in the PUD Guide, as the same may be amended, is three hundred ten (310) Units, of which seventy (70) may be Commercial Units, one hundred ninety-five (195) may be Residential Units, fifteen (15) may be Conference Facility Units, and thirty (30) may be Parking Units.



Section 3.2 Commercial Units; Boundaries; Combination; Subdivision. The Owner or Owners of one or more Commercial Units shall have the right to (a) relocate the boundaries of and between adjoining Commercial Units, (b) physically combine a part of or combination of parts of the space of one Commercial Unit with a part of or combination of parts of the space within one or more adjoining Commercial Units, or (c) subdivide a Commercial Unit or part of a Commercial Unit to create additional Commercial Units; provided, however, that no Commercial Unit shall contain less than 100 square feet. In order to accomplish any one of the foregoing, a Commercial Owner may remove or construct additional walls subject to the terms of this Section and any other applicable provisions of this Declaration. Upon the relocation, combination or subdivision of any Commercial Unit(s), the Commercial Unit(s) resulting from such relocation, combination or subdivision shall be re-allocated the Allocated Interest of the predecessor Commercial Unit(s) in and to the General Common Elements and the Limited Common Elements-Commercial. A Commercial Owner must first obtain the consent of the Executive Board as described below and must obtain all necessary approvals from any governmental authority having jurisdiction over the Project before exercising its rights herein. The cost and expense incurred for legal, architectural and engineering fees and all other costs and expenses incurred by the Association shall be borne by that party requesting such a change.

In order to relocate the boundaries of, combine or subdivide any Commercial Unit(s) as provided above, the Owner(s) of such Commercial Unit(s) shall submit an application to the Executive Board, which application shall be executed by such Owner(s) and shall include (a) evidence that the proposed relocation of the boundaries of, combination or subdivision of a Commercial Unit or Units complies with all building codes, fire codes and other applicable ordinances or resolutions adopted and enforced by the Master Association, the Town of Mt. Crested Butte, and the State of Colorado, and that the proposed action does not violate the terms of any Mortgage encumbering the Commercial Unit(s), (b) the proposed reallocations of Allocated Interests, (c) the proposed form of amendments to this Declaration, including the Map, as may be necessary to show the Commercial Unit(s) which are created by the relocation, combination or subdivision of a Commercial Unit(s) and their dimensions and identifying numbers, (d) a deposit against attorneys' fees and costs which the Commercial Owners and the Association may incur in reviewing and effectuating the transaction, in an amount reasonably estimated by the Executive Board, (e) evidence of the required approval of the Commercial Owner(s) that own the subject Commercial Unit(s), (f) evidence satisfactory to the Executive Board that the Owner(s) has obtained or caused to be obtained all requisite insurance in connection with any construction required to effect the proposed action, (g) indemnification of the Association by the Owner(s) for any and all matters relating to the proposed action, and (h) such other information as may be reasonably requested by the Executive Board. The President or any other authorized officer shall be permitted to execute and record any amendment effectuating the relocation of boundaries of or combination or subdivision of Commercial Units upon approval of same by the Executive Board.

Section 3.3 Conversion of Commercial Units and Conference Facility Units to Residential Units. Any Commercial Unit or Conference Facility Unit may be converted from a Commercial Unit or Conference Facility Unit (as the case may be) to a Residential Unit, and any Limited Common Elements appurtenant to such converted Unit may be converted from Limited Common Element-Commercial (LCE-C) to Unit space or Limited Common Element-Residential. Upon approval by the Executive Board, the Declarant, or any other Owner of a Commercial or Conference Facility Unit or Units with the express written consent of the Declarant, may convert such Unit to a Residential Unit and may convert any appurtenant Limited Common Element-Commercial to Limited Common Element-Residential or to Unit space within the new Residential Unit. All action required to undertake any such change in use may be authorized, approved and executed by the President of the Association or any other authorized officer on behalf of the Executive Board.



In order to convert a Commercial or Conference Facility Unit or Units to a Residential Unit, and to convert any appurtenant Limited Common Element-Commercial to Limited Common Element-Residential or to Unit space within the new Residential Unit, the Owner(s) of such Unit(s) to be converted shall submit an application to the Executive Board, which application shall be executed by such Owner and shall include (a) evidence that all approvals for the proposed change in use required by the Town of Mt. Crested Butte or any other governmental agency having jurisdiction over the Project have been obtained; (b) the proposed reallocation of Allocated Interests appurtenant to the converted Unit; (c) the proposed form of amendment to the Declaration, including the Map, as may be necessary to evidence such reallocation; (d) a deposit against attorneys' fees and costs which the Executive Board and/or the Association may incur in reviewing and effectuating the transaction, in an amount reasonably estimated by the Executive Board; (e) evidence satisfactory to the Executive Board that the Owner(s) of the Unit(s) to be converted has obtained or caused to be obtained all requisite insurance in connection with any construction required to effect the proposed action; (g) indemnification of the Association by the Owner(s) for any and all matters relating to the proposed action; and (h) such other information as may be reasonably requested by the Executive Board.

Section 3.4 Conference Facility Units; Boundaries; Combination; Subdivision. The Owner or Owners of one or more Conference Facility Units shall have the right to (a) relocate the boundaries of and between adjoining Conference Facility Units, (b) physically combine a part of or combination of parts of the space of one Conference Facility Unit with a part of or combination of parts of the space within one or more adjoining Conference Facility Units, or (c) subdivide a Conference Facility Unit or part of a Conference Facility Unit to create additional Conference Facility Units; provided, however, that no Conference Facility Unit shall contain less than 100 square feet. In order to accomplish any one of the foregoing, a Conference Facility Owner may remove or construct additional walls subject to the terms of this Section and any other applicable provisions of this Declaration. Upon the relocation, combination or subdivision of any Conference Facility Unit(s), the Conference Facility Unit(s) resulting from such relocation, combination or subdivision shall be re-allocated the Allocated Interest of the predecessor Conference Facility Unit(s) in and to the General Common Elements and the Limited Common Elements-Conference Facility. A Conference Facility Owner must first obtain the consent of the Executive Board as described below and must obtain all necessary approvals from any governmental authority having jurisdiction over the Project before exercising its rights herein. The cost and expense incurred for legal, architectural and engineering fees and all other costs and expenses incurred by the Association shall be borne by that party requesting such a change.

In order to relocate the boundaries of, combine or subdivide any Conference Facility Unit(s) as provided above, the Owner(s) of such Conference Facility Unit(s) shall submit an application to the Executive Board, which application shall be executed by such Owner(s) and shall include (a) evidence that the proposed relocation of the boundaries of, combination or subdivision of a Conference Facility Unit or Units complies with all building codes, fire codes and other applicable ordinances or resolutions adopted and enforced by the Master Association, the Town of Mt. Crested Butte, and the State of Colorado, and that the proposed action does not violate the terms of any Mortgage encumbering the Conference Facility Unit(s), (b) the proposed reallocations of Allocated Interests, (c) the proposed form of amendments to this Declaration, including the Map, as may be necessary to show the Conference Facility Unit(s) which are created by the relocation, combination or subdivision of a Conference Facility Unit(s) and their dimensions and identifying numbers, (d) a deposit against attorneys' fees and costs which the Conference Facility Owners and the Association may incur in reviewing and effectuating the transaction, in an amount reasonably estimated by the Executive Board, (e) evidence of the required approval of the Conference Facility Owner(s) that own the subject Conference Facility Unit(s), (f) evidence satisfactory to the Executive Board that the Owner(s) has obtained or caused to be obtained all requisite insurance in connection with any construction required to effect the proposed action, (g) indemnification of the Association by the Owner(s) for any and all matters relating to the proposed action, and (h) such other



information as may be reasonably requested by the Executive Board. The President or any other authorized officer shall be permitted to execute and record any amendment effectuating the relocation of boundaries of or combination or subdivision of Conference Facility Units upon approval of same by the Executive Board.

Section 3.5 Parking Units; Boundaries; Combination; Subdivision. The Owner or Owners of one or more Parking Units shall have the right to (a) relocate the boundaries of and between adjoining Parking Units, (b) physically combine a part of or combination of parts of the space of one Parking Unit with a part of or combination of parts of the space within one or more adjoining Parking Units, or (c) subdivide a Parking Unit or part of a Parking Unit to create additional Parking Units. In order to accomplish any one of the foregoing, a Parking Owner may remove or construct additional walls subject to the terms of this Section and any other applicable provisions of this Declaration. Upon the relocation, combination or subdivision of any Parking Unit(s), the Parking Unit(s) resulting from such relocation, combination or subdivision shall be re-allocated the Allocated Interest of the predecessor Parking Unit(s) in and to the General Common Elements and the Limited Common Elements-Parking. A Parking Owner must first obtain the consent of the Executive Board as described below and must obtain all necessary approvals from any governmental authority having jurisdiction over the Project before exercising its rights herein. The cost and expense incurred for legal, architectural and engineering fees and all other costs and expenses incurred by the Association shall be borne by that party requesting such a change.

In order to relocate the boundaries of, combine or subdivide any Parking Unit(s) as provided above, the Owner(s) of such Parking Unit(s) shall submit an application to the Executive Board, which application shall be executed by such Owner(s) and shall include (a) evidence that the proposed relocation of the boundaries of, combination or subdivision of a Parking Unit or Units complies with all building codes, fire codes and other applicable ordinances or resolutions adopted and enforced by the Master Association, the Town of Mt. Crested Butte, and the State of Colorado, and that the proposed action does not violate the terms of any Mortgage encumbering the Parking Unit(s), (b) the proposed reallocations of Allocated Interests, (c) the proposed form of amendments to this Declaration, including the Map, as may be necessary to show the Parking Unit(s) which are created by the relocation, combination or subdivision of a Parking Unit(s) and their dimensions and identifying numbers, (d) a deposit against attorneys' fees and costs which the Parking Owners and the Association may incur in reviewing and effectuating the transaction, in an amount reasonably estimated by the Executive Board, (e) evidence of the required approval of the Parking Owner(s) that own the subject Parking Unit(s), (f) evidence satisfactory to the Executive Board that the Owner(s) has obtained or caused to be obtained all requisite insurance in connection with any construction required to effect the proposed action, (g) indemnification of the Association by the Owner(s) for any and all matters relating to the proposed action, and (h) such other information as may be reasonably requested by the Executive Board. The President or any other authorized officer shall be permitted to execute and record any amendment effectuating the relocation of boundaries of or combination or subdivision of Parking Units upon approval of same by the Executive Board.

Section 3.6 Delineation of Unit Boundaries. The boundaries of each Individual Air Space Unit are delineated and designated by an identifying number on the Map.

Section 3.7 Inseparability of Unit. Except as provided in Section 3.2, Section 3.4 and Section 3.5 hereinabove, no part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration. Subject to Section 3.1 above, each Unit shall always be conveyed, transferred, devised, bequeathed, encumbered and otherwise affected only as a complete Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance or other disposition of a Unit or any part thereof

shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration.

All rights with respect to the use, possession, enjoyment, management or disposition of a Unit which an Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right jointly to use, possess or manage commonly owned property) are hereby unconditionally and irrevocably subordinated to this Declaration for so long as this Declaration shall remain in effect; provided, however, that in the event that an election to terminate this Declaration is made pursuant any provision of this Declaration, an Owner shall have the rights specified in this Declaration and the Act.

Section 3.8 Nonpartitionability of Common Elements. Subject to the provisions of this ARTICLE 3 and ARTICLE 5 below, the Common Elements shall be owned in common by all of the Owners and shall remain physically undivided; provided, however, the Limited Common Elements shall be for the exclusive use of, enjoyment by and control by the Owner(s) of Unit(s) to which such Limited Common Elements are appurtenant. No Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Owner of the Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the General Common Elements or any Limited Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses and reasonable attorneys' fees in defending any such action. Such amounts shall automatically become a default Assessment determined and levied against such Owner's Unit and enforced by the Association in accordance with ARTICLE 8 below.

Notwithstanding the foregoing, the Association shall have the right to dedicate, sell or otherwise transfer all or any part of the Common Elements to the fullest extent permitted under the Act.

ARTICLE 4 CONDOMINIUM MAP

Section 4.1 Condominium Map. The Map shall be filed for record in the Office of the Clerk and Recorder of Gunnison County, Colorado. The Map shall be filed for record following substantial completion of the Building(s) and prior to the conveyance of any Unit depicted on the Map to a purchaser. The Map shall show the location of the Building(s) on the Property; the floor and elevation plans; the location of the Units within the Building(s), both horizontally and vertically; the thickness of the common walls, if any, between or separating the Units one from the other, or from Common Elements, as applicable; the Unit designations; designation of General Common Elements and Limited Common Elements; and such other information as Declarant may determine in its discretion. The Map shall further contain such other information, certifications and depictions as may be required by the Act.

Section 4.2 Amendment. Declarant reserves the right to amend or supplement the Map, from time to time, to the fullest extent permitted under the Act or as permitted by this Declaration.

ARTICLE 5 OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

Section 5.1 General Common Elements. Every Owner and the family members, Guests and Lessees of each Owner shall have a perpetual right and easement of access over, across and upon the General Common Elements for the purpose of entering and exiting such Owner's Unit and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:



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

5.1.2 The right of the Association to regulate on an equitable basis the use of parking spaces and storage spaces, if any, which are General Common Elements or Limited Common Elements from time to time; and

5.1.3 The right of the Association to adopt, from time to time, any and all rules and regulations concerning the Common Elements as the Association may determine are necessary or prudent, subject to the terms of Section 7.8 and ARTICLE 13 hereof.

Notwithstanding the foregoing, the Association shall take no action that unreasonably restricts any Owner's or such Owner's Guests' or Lessees' right and easement of access over, across and upon the General Common Elements to such Owner's Unit(s).

Section 5.2 Limited Common Elements.

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

5.2.2 Storage spaces, if any, may be designated on the Map as Limited Common Elements appurtenant to the Units or a Category thereof and reserved for the exclusive use of the Owners and the Guests and Lessees of the Owners of the Units; provided, however, any such designation shall not be construed as granting any Owner of a Unit the ownership of such storage spaces. The Executive Board shall designate as General Common Elements and subject to regulation all remaining storage spaces.

5.2.3 Any redesignation of the boundaries of the General Common Elements or of the General Common Elements to Limited Common Elements shall be approved by the Executive Board. Declarant hereby reserves the right and grants to the Association the right to reassign Limited Common Elements to the fullest extent permitted under the Act. Any modification to the Common Elements or the Units shall not impair the life safety systems of the Project.

Section 5.3 Parking: Ownership and Control by Master Association. The Parking Unit(s) shall be initially owned by the Master Association and shall be operated by the Master Association as Master Common Area. As such, the Owners agree as follows:

5.3.1 The Parking Unit(s) are not Common Elements of Mountaineer Square Condominiums and may be administered, used, and operated by the Owner(s) thereof as such Owner(s) determine in their sole discretion, subject to applicable governmental approvals and regulation and applicable provisions of the Association Documents.

5.3.2 The Parking Unit(s) may be subject to public use rights pursuant to the PUD Guide or otherwise.

5.3.3 No Owner other than the Owner(s) of the Parking Unit(s) shall have any interest in or right to use the Parking Unit(s), or any Limited Common Elements-Parking, solely by virtue of their ownership of another Unit within Mountaineer Square Condominiums. Parking rights of other Owners are provided by and through the Parking Agreement, which document is the only means by which any Owners other than the Parking Owner(s) obtain any rights to use the Parking Unit(s). The Association has certain obligations of payment pursuant to the Parking Agreement as more particularly provided therein.

5.3.4 Subject to applicable provisions of the Parking Agreement and any rights of the Owners pursuant to the Parking Agreement:

5.3.4.1 The Owner(s) of the Parking Unit(s) shall have the absolute right to charge fees for the use of the Parking Unit(s), in their sole and absolute discretion.

5.3.4.2 Access to and use of the Parking Unit(s) are strictly subject to the rules and procedures of the respective Owner(s) of the Parking Unit(s), and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of any Unit other than a Parking Unit.

5.3.4.3 ALL PERSONS, INCLUDING ALL OWNERS, ARE HEREBY ADVISED THAT NO REPRESENTATIONS OR WARRANTIES, EITHER WRITTEN OR ORAL, HAVE BEEN MADE OR ARE MADE BY DECLARANT OR ANY OTHER PERSON WITH REGARD TO THE NATURE OR SIZE OF IMPROVEMENTS TO, OR THE CONTINUING OWNERSHIP OR OPERATION OF, THE PARKING UNIT(S). NO PURPORTED REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, IN REGARD TO THE PARKING UNIT(S) SHALL EVER BE EFFECTIVE WITHOUT AN AMENDMENT HERETO EXECUTED OR JOINED INTO BY DECLARANT.

5.3.4.4 FURTHER, ALL PERSONS, INCLUDING ALL OWNERS, ARE HEREBY ADVISED THAT THE ASSOCIATION WILL NOT OWN THE PARKING UNIT(S) OR ANY RELATED FACILITIES.

5.3.4.5 The ownership or operational duties of and as to the Parking Unit(s) may change at any time and from time to time by virtue of, but without limitation, the sale to or assumption of operations by another entity. No consent of the Association or any Owner shall be required to effectuate such a transfer or conversion.

5.3.4.6 Rights to use the Parking Unit(s) will be granted only to such persons, and on such terms and conditions, as may be determined by their respective Owner(s). Such Owner(s) shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Parking Unit(s) and to terminate use rights altogether.

Section 5.4 Master Common Area.

5.4.1 Declarant reserves for itself and its successors and assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, and/or to convey by license, easement or otherwise to the Master Association an interest in any portion of the Property and the Common Elements in order that such portion of the Property or the Common Elements shall be deemed a part of the Master Common Area subject to the maintenance and control of the Master Association pursuant to the Master Declaration.

5.4.2 The Owner(s) hereby acknowledge and agree that, without limiting the right and authority of the Master Association to hold other property as Master Common Area, and without limiting the right and authority of the Declarant or the Association to dedicate additional areas or portions of the Property to the Master Association as Master Common Area, that the following components of Mountaineer Square shall initially be Master Common Area:

5.4.2.1 The Parking Unit(s);

5.4.2.2 All pedestrian plaza improvements of Mountaineer Square and generally all improvements located outside of the footprints of the Building(s) at the pedestrian plaza level; and

5.4.2.3 Snowmelt systems serving the pedestrian plaza area as well as all utility systems and other components thereof.

ARTICLE 6 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 6.1 Association Membership. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Unit. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. If title to a Unit is held by more than one person, such Owners shall designate one person as their representative and appoint such person as their proxy, as more fully described in this Declaration and the bylaws of the Association or as otherwise required by applicable law. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

Section 6.2 Categories of Membership. There shall be four (4) Categories of membership in the Association as follows:

6.2.1 Residential Owners. All Owners of Residential Units including the Declarant so long as Declarant continues to own an interest in a Residential Unit.

6.2.2 Commercial Owners. All Owners of the Commercial Units including the Declarant so long as Declarant continues to own an interest in a Commercial Unit.

6.2.3 Conference Facility Owners. All Owners of Conference Facility Units including the Declarant so long as Declarant continues to own an interest in a Conference Facility Unit.

6.2.4 Parking Owners. All Owners of the Parking Units including the Declarant so long as Declarant continues to own an interest in a Parking Unit.

Section 6.3 Voting Rights. Each Unit shall be allocated a vote on Association matters equivalent to the Allocated Interest of such Unit as provided on Exhibit B attached hereto and incorporated herein by reference, as amended and supplemented from time to time.

The Association shall not have a vote with respect to any Unit that may be owned by it. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Association may exercise such voting rights subject to and in accordance with the provisions below and those of the bylaws of the Association.

Section 6.4 Election of Directors. During the Declarant Control Period, the Directors shall be appointed by the Declarant without regard to the Categories of Directors or the election thereof by certain Categories of members as described in this Section below. The initial Executive Board shall consist of three (3) Directors. The Directors elected by the Owners or appointed by Declarant during the Declarant Control Period shall not be classified by Category. Any Director who is required to be elected by Owners other than Declarant during the Declarant Control Period shall be elected at large by all Owners. It is hereby determined that, after the expiration of the Declarant Control Period, in order to protect the valid interests of the various Categories of Owners, each Category requires representation on the Executive Board and is hereby entitled to elect certain Directors thereto. After the expiration of the Declarant Control Period, the Executive Board shall consist of seven (7) Directors, of which the Category



of Residential Owners shall be entitled to nominate and elect two (2) Directors, the Category of Commercial Owners shall be entitled to nominate and elect two (2) Directors, the Category of Conference Facility Owners shall be entitled to nominate and elect two (2) Directors, and the Category of Parking Owners shall be entitled to nominate and elect one (1) Director. Only members of a Category shall be entitled to cast a vote with respect to the election of the Director(s) to represent such Category, and the nominee(s) receiving the highest number of votes cast by members of the applicable Category present in person or by proxy at a meeting of the Members at which a quorum is present shall be elected, as more particularly provided in the Bylaws.

Section 6.5 Declarant Control. Notwithstanding anything to the contrary provided for herein or in the bylaws of the Association, Declarant shall, during the Declarant Control Period, be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent currently permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Gunnison County, Colorado but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

Section 6.6 Owner's and Association's Address for Notices. All Owners of each Unit shall have one and the same mailing address to be registered with the Association and used by the Association or other Owners for notices, demands and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.

If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address.

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

Executive Board
Mountaineer Square Condominium Association
Mt. CB Real Estate, LLC, a Colorado limited liability company
P.O. Box 5700
Mt. Crested Butte, Colorado, 81225

All notices given in accordance with this Section shall be sent: (a) by personal delivery, which shall be effective upon receipt; (b) by overnight courier service, which shall be effective one (1) business



day following timely deposit with the courier service; or (c) regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

Unless otherwise provided in writing by the Association or the Managing Agent, all bills for common utility services shall be sent to the Executive Board at the address designated in this Section.

ARTICLE 7 ASSOCIATION DUTIES

Section 7.1 Association Management Duties.

7.1.1 Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of Mountaineer Square and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, improvement, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 8.5 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

7.1.2 Notwithstanding the foregoing, if any Limited Common Element is exclusively allocated to one or more Units or one or more Categories of Units, the Owner(s) of such individual Unit(s) shall be responsible for any Limited Common Elements allocated to such Unit(s) or Category(ies), other than exterior Limited Common Elements which for purposes of this Section shall be maintained by the Association in the same manner as the General Common Elements described above, and each Owner shall also be responsible for keeping the same in a good, clean, sanitary, and attractive condition.

Section 7.2 Security and Safety Services. The Association may provide security and safety services within Mountaineer Square, including but not limited to, limiting access to Mountaineer Square in appropriate manners and providing security personnel, security systems, fire protection facilities which may include periodic fire prevention inspections and equipment certifications. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR FOR THE INEFFECTIVENESS OF ANY SECURITY MEASURE UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL GUESTS AND LESSEES, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS EXECUTIVE BOARD, DECLARANT AND ANY SUCCESSOR DECLARANT, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, ACCESS LIMITATION SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE DESIGN GUIDELINES ESTABLISHED BY THE DECLARANT MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL GUESTS AND LESSEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO COMMON ELEMENTS, TO UNITS, TO IMPROVEMENTS CONSTRUCTED UPON OR WITHIN UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS EXECUTIVE BOARD AND COMMITTEES, DECLARANT OR ANY



SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY GUEST OR LESSEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS, ACCESS LIMITATION SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Section 7.3 Reserve Account. The Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, adequate reserve accounts for maintenance, repair or replacement of those Common Elements that must be replaced on a periodic basis, the reserve funds to be designated for the use of either the General Common Elements, Limited Common Elements-Residential, Limited Common Elements-Commercial, Limited Common Elements-Conference Facility or Limited Common Elements-Parking and segregated by account in these categories (collectively, the "Reserve Account").

Section 7.4 Owner's Negligence. Subject to the terms of Section 9.4 hereof, in the event that the need for maintenance, repair or replacement of all or any portion of the Common Elements is due to the grossly negligent, reckless or willful act or omission of an Owner, any member of an Owner's family, or an Owner's Guests or Lessees, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. To the extent that the area in need of maintenance, repair or replacement is due to the negligent act or omission of an Owner, any member of an Owner's family, or an Owner's Guests or Lessees, then such Owner shall be liable to the Association for the amount of any applicable insurance deductible(s) and for any amounts in excess of insurance proceeds; provided, however, if such area is not covered by insurance the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. If the Owner fails to repay any applicable expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a default Assessment determined and levied against such Owner's Unit, enforceable by the Association in accordance with ARTICLE 8 below.

Section 7.5 Delegation of Management and Maintenance Duties. The Executive Board may delegate all or any part of its powers and duties to one or more Managing Agents, including Declarant or affiliates of Declarant or either of them. A Management Agreement entered into by the Executive Board may only be terminated by the Executive Board by a majority vote thereof. Notwithstanding the delegation by the Executive Board to a Managing Agent, the Executive Board shall not be relieved of its responsibilities under this Declaration.

Section 7.6 Acquiring and Disposing of Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners tangible and intangible personal property, including without limitation, membership rights, services and benefits, for the use, enjoyment security, comfort and convenience of Owners and any Category thereof 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 in the same undivided proportion as their respective undivided interests in the Common Elements. Such interests shall not be transferable except with the transfer of a Unit. A conveyance of a Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners and subject to the reasonable rules and regulations for such use established by the Executive Board. The transfer of title to a Unit under

foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

Section 7.7 Cooperation with Districts, Master Association and Other Associations. The Association may contract or cooperate with any applicable special or metropolitan district, the Master Association or with other homeowners' associations or entities within Mt. Crested Butte Town Center or elsewhere as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, Guests and Lessees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a General Common Expense if for the benefit of all Owners or shall be a Limited Common Expense if for the benefit of one or more but less than all Owners.

Section 7.8 Issuance of Rules and Regulations. The Executive Board may make and amend reasonable rules and regulations governing the use and rental of the Units and the use and operation of the Common Elements. Notwithstanding the foregoing, any such rules and regulations shall not be inconsistent with the terms of this Declaration, including, but not limited to ARTICLE 13. In addition, such rules and regulations shall, when applied to each of the Units considering the use of such Unit, be equitable and reasonable as applied to the Unit with respect to the use thereof. After the adoption of the initial rules and regulations, which may be approved by the Executive Board with the consent of the Declarant prior to the conveyance of the first Unit in the Project, the Executive Board shall provide thirty (30) days written notice prior to the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

Section 7.9 Identity of Executive Board and Managing Agent. From time to time, but no less than annually, the Association shall mail to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent(s), if any.

Section 7.10 Implied Rights of the Association. The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

7.10.1 adopt and amend the bylaws and rules and regulations of the Association;

7.10.2 adopt and amend budgets for revenues, expenditures and reserves and collect Assessments, including without limitation Assessments for Common Expenses, from Owners;

7.10.3 hire and terminate Managing Agents and other employees, agents and independent contractors. The Managing Agent shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Managing Agent of any duty, power or function so delegated by written instrument executed by or on behalf of the Executive Board;

7.10.4 institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Mt. Crested Butte Town Center;

7.10.5 make contracts and incur liabilities;

7.10.6 regulate the use, improvement, maintenance, repair, replacement and modification of the Common Elements;

7.10.7 cause additional improvements to be made as part of the Common Elements, including the construction of any capital asset;

7.10.8 acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property;

7.10.9 impose and receive charges for late payments of Assessments, recover reasonable attorney's fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and levy reasonable fines and penalties for violations of the Association Documents;

7.10.10 impose and receive reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

7.10.11 provide for the indemnification of the Association's officers and directors and maintain directors' and officers' liability insurance;

7.10.12 assign its right to future income, including without limitation, its right to receive Assessments;

7.10.13 obtain and pay for legal, accounting and other professional services;

7.10.14 perform any power or obligation of the Association by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable; and

7.10.15 enjoy and exercise any other power or authority which similar associations may now or hereafter enjoy or exercise in the State of Colorado.

Section 7.11 Enforcement of Association Documents. Subject to the provisions of ARTICLE 21, the Association, or any aggrieved Owner may take judicial action against any Owner to enforce compliance with the rules and regulations of the Association and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law. The Executive Board may also impose sanctions, after notice and hearing as provided in the bylaws of the Association, for any noncompliance with the Association Documents. Such sanctions that may be imposed by the Executive Board shall include, without limitation:

7.11.1 Imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. In the event that any occupant, Guest or Lessee of a Unit violates the Association Documents and a fine is imposed, the fine shall be assessed against the Owner of such Unit;

7.11.2 Suspending an Owner's right to vote on Association matters;

7.11.3 Prohibiting an Owner or such Owner's designee from serving as a Director or officer of the Association, including, without limitation, the right to remove any then-current Director or officer of the Association in default by a vote of a majority of the remaining Directors;

7.11.4 Suspending any person's right to use the Common Elements and all facilities contained therein; provided however, nothing herein shall authorize the Executive Board to limit ingress to or egress from a Unit;

7.11.5 Suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

7.11.6 Exercising self-help or taking action to abate any violation of the Association Documents in a non-emergency situation;

7.11.7 Requiring an Owner, at the expense of such Owner, to remove any structure or improvement on such Owner's Unit in violation of the Association Documents and to restore the Unit to its previous condition consistent with the Community-wide Standard and, upon failure of the Owner to do so, the Executive Board or its designee shall have the right to enter the Unit, remove the violation and restore the Unit to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

7.11.8 Levying default Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Association Documents; and

7.11.9 In addition, the Executive Board may take the following enforcement actions to ensure compliance with the Association Documents without the necessity of compliance with the procedures set forth in the Bylaws or ARTICLE 21:

7.11.9.1 Exercising self-help in any emergency situation; or

7.11.9.2 Bringing suit at law or equity to enjoin any violation or to recover monetary damages or both.

7.11.10 All remedies set forth in the Association Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Association Documents, if the Association prevails, it shall recover all costs, including attorneys' fees, expenses and court costs, reasonably incurred in such action, and such costs shall be included in the award at trial.

7.11.11 The decision to pursue enforcement action in any particular case shall be left to the Executive Board's discretion, except that the Executive Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Executive Board may determine that, under the circumstances of a particular case:

7.11.11.1 The Association's position is not strong enough to justify taking any or further action;

7.11.11.2 The covenant, restriction or rule being enforced is, or is likely to be construed as, unenforceable or inconsistent with applicable law;

7.11.11.3 Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

7.11.11.4 That it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, rule or regulation.

Section 7.12 Books and Records of the Association. The Executive Board, directly or through its Managing Agent(s), as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees may inspect the records of receipts and expenditures of the Managing Agent(s) or the Executive Board at convenient weekday business hours. In addition, the other books, records and papers of the Association, including this Declaration, the articles of incorporation and the bylaws of the Association, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner or Mortgagee at all times during convenient weekday business hours. Unless a shorter time is required by law, inspection shall require three (3) days advance, written notice.

Section 7.13 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON ELEMENTS, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 10, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THE COMMON ELEMENTS TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

ARTICLE 8 ASSESSMENTS

Section 8.1 Covenant of Personal Obligation of Assessments. Declarant, by creating the Units pursuant to this Declaration, and every other Owner, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree with the Association, and hereby does so covenant and agree to pay to the Association, the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Unit. Pursuant to the Master Association Documents, the Association is empowered and authorized, and upon the request of the Master Association shall be required, to levy and collect from Owners of Units within the Association the assessments owing to the Master Association as part of the Association's own assessment procedures and to promptly remit such assessments collected by the Association to the Master Association.

Section 8.2 Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience and general welfare of the Owners, including the improvement and maintenance of the Property and of the services and facilities located on the Property. Proper uses of the Assessments shall include, but are not limited to, the following:

8.2.1 Repairing, replacing, renovating, rebuilding, improving and maintaining any of the Common Elements not made the responsibility of the Owners by Section 7.4 above, Section 9.2 below, or other provisions of this Declaration;

8.2.2 Installing, maintaining and repairing underground utilities upon, across, over and under any part of the Project which are not conveyed to and accepted by utility companies;

8.2.3 Furnishing garbage and trash pickup and water and sewer services to the Project;

8.2.4 Paying management and professional fees;

8.2.5 Obtaining and maintaining insurance in accordance with the provisions of ARTICLE 10 below;

8.2.6 Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements and other purposes;

8.2.7 Carrying out all other powers, rights and duties of the Association specified in the Association Documents; and

8.2.8 Generally, addressing any other expenses necessary to meet the purposes of the Association.

Section 8.3 Amount of Total Annual Assessments. The total annual Assessments against all Units shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such fiscal year, as approved by the Owners pursuant to Section 8.5 below, which estimates may include, among other things, the costs associated with the items enumerated in Section 8.2 above, together with any other costs and fees which may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of the Association Documents. In the event of surplus funds remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves, the Executive Board may within its discretion apply to or for the benefit of Owners or any Category(ies) of Owners, the surplus funds (a) into reserves, (b) toward the following year's Common Expenses, (c) toward a credit to Owners against future assessments, (d) as a refund to Owners or (e) any combination of the foregoing.

Section 8.4 Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to each Unit as follows:

8.4.1 The annual Assessment for each Residential Unit shall be in an amount equal to (i) the Allocated Interest of such Unit multiplied by the GCE Budget (as defined hereinafter), plus (ii) the Allocated Interest-Residential of such Unit multiplied by the LCER Budget (as defined hereinafter).

8.4.2 The annual Assessment for each Commercial Unit shall be in an amount equal to (i) the Allocated Interest of such Unit multiplied by the GCE Budget, plus (ii) the Allocated Interest-Commercial of such Unit multiplied by the LCEC Budget (as defined hereinafter).

8.4.3 The annual Assessment for each Conference Facility Unit shall be in an amount equal to (i) the Allocated Interest of such Unit multiplied by the GCE Budget (as defined hereinafter), plus (ii) the Allocated Interest-Conference Facility of such Unit multiplied by the LCECF Budget (as defined hereinafter).

8.4.4 The annual Assessment for each Parking Unit shall be in an amount equal to (i) the Allocated Interest of such Unit multiplied by the GCE Budget, plus (ii) the Allocated Interest-Parking of such Unit multiplied by the LCEP Budget (as defined hereinafter).

To the extent any Common Expense relating to the Common Elements disproportionately benefits any Owner or group of Owners, the Executive Board may adjust the assessment for such Common Expense in such proportion as may be appropriate. The Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under ARTICLE 10, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in ARTICLE 10. The total annual Assessments of the Association shall be apportioned among all Units as provided in this Section.

It is contemplated that individual Units will not be metered for separate billing related to some or all utilities (such as electricity and natural gas), but rather that sub-meters would monitor utility usage by

the various Categories of ownership within the Association, and that those costs would be allocated to the Units within each Category on the basis of each Category's Allocated Interests.

Section 8.5 Annual Budget.

8.5.1 After the adoption of any proposed budgets for the Association in accordance with the procedures described below, the Executive Board shall deliver by ordinary first-class mail or otherwise deliver a summary of the budget information relative to each of the Owners to such parties. The Executive Board shall also set a date for the meeting of all Owners to consider ratification of the budgets as required by the Act.

8.5.2 In connection with formulating the foregoing annual budgets for the entire Project, the Executive Board shall prepare proposed budgets for the Limited Common Elements-Residential (the "LCER Budget"), the Limited Common Elements-Commercial (the "LCEC Budget"), the Limited Common Elements-Conference Facility (the "LCECF Budget"), the Limited Common Elements-Parking (the "LCEP Budget"), and the General Common Elements (the "GCE Budget"). The Executive Board shall, within the time period required by the Act after the adoption thereof, deliver (i) the LCER Budget and the GCE Budget to the Residential Owners; (ii) the LCEC Budget and the GCE Budget to the Commercial Owners; (iii) the LCECF Budget and the GCE Budget to the Conference Facility Owners; and (iv) the LCEP Budget and the GCE Budget to the Parking Owners.

The LCER Budget proposed by the Executive Board shall not require approval from the Residential Owners and will be deemed approved by the Residential Owners in the absence of a veto at the noticed meeting by Residential Owners representing more than eighty percent (80%) of the total Allocated Interest-Residential. The LCEC Budget proposed by the Executive Board shall not require approval from the Commercial Owners and will be deemed approved by the Commercial Owners in the absence of a veto at the noticed meeting by Commercial Owners representing more than eighty percent (80%) of the total Allocated Interest-Commercial. The LCECF Budget proposed by the Executive Board shall not require approval from the Conference Facility Owners and will be deemed approved by the Conference Facility Owners in the absence of a veto at the noticed meeting by Conference Facility Owners representing more than eighty percent (80%) of the total Allocated Interest-Conference Facility. The LCEP Budget proposed by the Executive Board shall not require approval from the Parking Owners and will be deemed approved by the Parking Owners in the absence of a veto at the noticed meeting by Parking Owners representing more than eighty percent (80%) of the total Allocated Interest-Parking. The GCE Budget proposed by the Executive Board shall not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners representing more than eighty percent (80%) of the total Allocated Interest. In the event that any proposed budget is rejected, the periodic budget last ratified in accordance with this Section must be continued until such time as the applicable Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt budgets and submit the budgets to the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Association's Annual Assessments in accordance with the annual budgets.

Section 8.6 Special Assessments. In addition to the annual Assessments authorized above, the Executive Board may at any time and from time to time determine, levy, assess and collect in any fiscal year (without the vote of the members of the Association, except as provided in the Act and in this Section below) a special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine) against all of the Owners with respect to the General Common Elements or any of the Categories of Owners with respect to their respective Limited Common Elements for the purpose of defraying, in whole or in part, the unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project

or of any facilities located on the Project, specifically including any fixtures and personal property related to it. Special Assessments shall be based on a budget or budgets adopted in accordance with Section 8.5 provided that, if necessary, the Association may adopt a new budget pursuant to Section 8.5 prior to levying a special Assessment. Such special Assessment(s) shall be due and payable as determined by the Executive Board.

Section 8.7 Due Dates for Assessment Payments. Unless otherwise determined by the Executive Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid periodically in advance (no less frequently than annually and no more frequently than monthly) and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this ARTICLE 8), on the first day of each payment period. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Executive Board may declare such assessment due in full and may assess a "late charge" on the installment in an amount of fifteen percent (15%) of the amount outstanding or such other charge, which does not exceed any limitations established by applicable law, as the Executive Board may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment.

Section 8.8 Declarant's Obligation to Pay Assessments. Declarant shall be obligated to pay the annual, special, and default Assessments (including installments thereof) on each Unit owned by it.

Section 8.9 Default Assessments. All monetary fines or other charges imposed or assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner pursuant to the Association Documents, shall become liens against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to the Assessment at least thirty (30) days prior to the due date.

Section 8.10 Lien for Assessments. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 8.11 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the bylaws of the Association and Section 8.11 below, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or a Managing Agent and shall be recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado. Any such lien notice shall not constitute a condition precedent to or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

Section 8.11 Effect of Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the Maximum Rate on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment; (ii) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, as well as

any default Assessments; (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same; and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of annual and special Assessments, all personal Assessments and all default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 8.7 above, any accrued interest under this Section 8.11, the Association's costs, expenses and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease or mortgage the Unit, and to convey or otherwise deal with the Unit acquired in such proceedings.

First Mortgagees shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the First Mortgagee in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 8.12 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, except as provided in Section 8.13 and Section 8.14 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 8.14 below.

Section 8.13 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably subordinates the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, to the Association's perpetual lien for collection of assessments. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

8.13.1 Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

8.13.2 Any lien created by the Master Declaration; and

8.13.3 Except to the extent of the limited priority of the Association's lien under the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens.

With respect to this subsection 8.13.3, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in this Section 8.13 above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses and attorneys' fees, as provided in this ARTICLE 8, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Section 8.12 above and except as provided in Section 8.14 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 8.14 Statement of Status of Assessments. Upon fourteen (14) calendar days written request (furnished in the manner described below for the response to such request) to a Managing Agent, the Executive Board or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

8.14.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees then existing against a particular Unit;

8.14.2 The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

8.14.3 The date of the payment of any installments of any special Assessments then existing against the Unit; and

8.14.4 Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above



within said fourteen (14) calendar day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 8.15 Liens. Except for annual, special, and default Assessment liens as provided in this Declaration, mechanics' liens (except as provided in ARTICLE 12 below), tax liens and judgment liens and other liens validly arising by operation of law and liens arising under Mortgages, there shall be no other liens obtainable against the Common Elements or against the interest of any Unit in the Common Elements.

ARTICLE 9 MAINTENANCE RESPONSIBILITY

Section 9.1 Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales or leases to initial purchasers of the Units, each Owner shall have the exclusive right and duty to paint, tile, wall paper or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings and doors forming the boundaries of such Owner's Individual Air Space Unit and all walls, floors, ceilings and doors within such boundaries.

Section 9.2 Responsibility of the Owner. The Owner at the Owner's expense shall maintain and keep in repair the interior of the Unit, including the fixtures and utilities located in the Unit to the extent current repair shall be necessary in order to avoid damaging other Units or the Common Elements. All fixtures, equipment and utilities installed and included in an Individual Air Space Unit serving only that Unit, commencing at a point where the fixtures, equipment and utilities enter the Individual Air Space Unit, shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair all windows and other glass items related to such Owner's Unit and any entry door or doors serving such Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation or plumbing systems or integrity of the Building, or impair any easement or hereditament. Except as otherwise set forth in Section 13.5, no Owner shall alter any Common Elements without the prior written consent of the Association.

Section 9.3 Responsibility of the Association. The Association, without the requirement of approval of the Owners but subject to Section 8.5 above, shall maintain and keep in good repair, replace and improve, as a Common Expense, the Common Elements and all portions of the Project not required in this Declaration to be maintained and kept in good repair by an Owner, a Category of Owners or Declarant.

Section 9.4 Owner's Failure to Maintain or Repair. In the event that portions of a Unit or other improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Unit, or in the event that such improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be a default Assessment and shall be reimbursed to the Association by the Owner of the Unit, upon

demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with ARTICLE 8 of this Declaration. In the event of an emergency which threatens imminent bodily harm or property damage the Association shall have the right to give such shorter notice as may be reasonable under the circumstances and to undertake repairs if not undertaken by such Owner.

Section 9.5 Owner's Responsibility for Limited Common Elements. The Owner of each Unit is solely responsible for all expenses of maintenance, repair and replacement of Limited Common Elements appurtenant to such Owner's Unit.

ARTICLE 10 INSURANCE AND FIDELITY BONDS

Section 10.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available:

10.1.1 Property insurance on the Common Elements and, to the extent required by law, the Units for fire and other broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping, personal property and other items normally excluded from property policies. In all insurance policies obtained hereunder, the Association shall be named as a co-insured as agent for each of the Owners.

10.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and the Association, insuring the Executive Board, the Association, the Managing Agent and their respective employees, agents and all persons acting as agents. Limits of liability will be determined by the Executive Board and will be at least \$5,000,000 for any injuries or death sustained by any person in any single occurrence, and at least \$1,000,000 for property damage resulting from each occurrence. Such policy will include coverage for contractual liability, liability for non-owned and hired automobiles, and such other risks as are customarily covered with respect to developments similar to Mountaineer Square in construction, location and use. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

10.1.3 The Association may carry such other insurance that the Executive Board considers appropriate, including insurance on Units that the Association is not obligated to insure, to protect the Association or the Owners.

Section 10.2 Cancellation. If the insurance described in Section 10.1 above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be given to all Owners.

Section 10.3 Policy Provisions. To the extent reasonably obtainable, insurance policies carried pursuant to Section 10.1 above must provide that:

10.3.1 Each Owner is an additional insured under the commercial general liability insurance required in Subsection 10.1.2, with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;



10.3.2 The insurer waives its rights of subrogation under the policy against any Owner, member of his household, Guest, Lessee, or invitee to the extent of the coverage obligation in Subsection 10.3.1;

10.3.3 No act or omission by an Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or operate as a condition to recovery by any other person under such policy; and

10.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance to the extent of the coverage obligation in Subsection 10.3.1.

Section 10.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 10.1 above must be adjusted with the Association or the Managing Agent acting on behalf of the Association, but the insurance proceeds for a loss shall be payable to any insurance trustee, including but not limited to the Managing Agent, designated for that purpose by the Executive Board or to the Association as directed by the Executive Board, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 10.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 10.5 Association Policies. 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 the Property or the Common Elements, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 10.6 Insurer Obligation. Certificates of Insurance shall be furnished to the Association and, upon written request, to any Owner or Mortgagee, evidencing that all insurance required hereunder is in full force and effect and shall provide thirty (30) days advance written notice to the Association of any cancellation, non-renewal or reduction in coverage.

Section 10.7 Repair and Replacement.

10.7.1 Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.7.1.1 The regime created by this Declaration is terminated;

10.7.1.2 Repair or replacement would be illegal under any state or local statute or ordinance;

10.7.1.3 Owners representing sixty-seven percent (67%) or more of the total Allocated Interests appurtenant to all Units vote not to rebuild; or

10.7.1.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.



10.7.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all damaged Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the remaining insurance proceeds must then be distributed to all the Owners or Mortgagees, as their interests may appear, in proportion to their respective Allocated Interests.

Section 10.8 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 10.9 Fidelity Insurance. Fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, agents and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two (2) months' current Assessments plus reserves as calculated from the then current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than two (2) months' assessments plus reserves, as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer or disbursement of Association funds be less than \$50,000. In addition all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.10 Worker's Compensation Insurance. If the Association has employees, the Association shall obtain worker's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 10.11 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors and officers against any liability asserted against a Director or officer or incurred by him in his capacity of or arising out of his status as a Director or officer. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

Section 10.12 Insurance Obtained by Owners. It shall be the responsibility of each Owner, at such Owner's expense, to maintain (i) physical damage insurance on the interior, finished surfaces of walls, floors and ceilings of such Owner's Unit, such Owner's personal property, furnishings, appliances and equipment and (ii) commercial general liability insurance in a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for each Owner's Individual Air Space Unit per occurrence for bodily injury or property damage, and if higher limits shall at any time be customary to protect against tort liability such higher limits shall be carried. In addition, to the insurance required by this Section, an Owner in its sole discretion may obtain such other and additional insurance coverage on and in relation to the Owner's Unit. However, any additional insurance obtained by Owner shall not adversely affect, diminish or terminate any insurance carried by the Association, nor shall Owner's additional insurance result in apportionment of any insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the



Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any additional insurance policies obtained by an Owner shall be endorsed with a waiver of subrogation clause whereby the insurance provider's right of subrogation is waived with respect to the Association and other Owners. Each Owner shall maintain "all risk" property insurance on any improvements made to the Unit by the Owner and not initially made by Declarant, including, but not limited to, the value of structural upgrades or fixtures supplied by the Owner, or if the applicable insurance is to be provided by the Association, for any additional insurance costs associated with such increased value of the improvements.

The Executive Board may require an Owner who purchases additional insurance coverage for the Owner's Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

ARTICLE 11 CONVEYANCES AND TAXATION OF CONDOMINIUM UNITS

Section 11.1 Contracts to Convey Entered into Prior to Recording of Condominium Map and Declaration. A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Condominium Map and this Declaration in the Office of the Clerk and Recorder of Gunnison County, Colorado, may legally describe such Unit in substantially the manner set forth in Section 11.2 below and may indicate that the Condominium Map and this Declaration are to be recorded.

Section 11.2 Contracts to Convey and Conveyances Subsequent to Recording of Condominium Map and Declaration. Subsequent to the recording of the Condominium Map and this Declaration, contracts to convey, instruments of conveyance of Units and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required under the Act or by the circumstances or appropriate to conform to the requirements of any governmental authority or any usage or requirement of law with respect thereto:

Condominium Unit _____, Mountaineer Square Condominiums, according to the Declaration of Condominium for Mountaineer Square Condominiums, recorded _____, 200__, under Reception No. _____ and the Condominium Map for Mountaineer Square Condominiums recorded _____, 200__, under Reception No. _____ in the Office of the Clerk and Recorder of Gunnison County, Colorado.

Section 11.3 Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Mortgage, or other instrument affecting title to a Unit which legally describes the Unit substantially in the manner set forth in Section 11.2 above shall be construed to describe the Individual Air Space Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it (unless any such fixtures or improvements shall be Common Elements), and to incorporate all the rights incident to ownership of a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 11.4 Separate Tax Assessments. Upon the recording of this Declaration and the filing of the Map for record in the Office of the Clerk and Recorder of Gunnison County, Colorado, Declarant shall deliver a recorded copy of this Declaration and the Map to the Assessor of Gunnison County, Colorado, as provided by law, which notice shall set forth the descriptions of the Units, including the interest in the Common Elements appurtenant to the Unit, so that thereafter all taxes, assessments and other charges by any governmental or political subdivision or any special improvement district or any

other taxing agent or assessing authority shall be assessed against and collected on each Unit, each of which shall be carried on the tax records as a separate and distinct parcel for that purpose. For the purpose of such assessment against the Units, valuation of the Common Elements shall be apportioned among the Units in proportion to the Allocated Interest in the Common Elements appurtenant to such Units. Valuation of Limited Common Elements shall be apportioned among those Units having the beneficial use of such Limited Common Elements. Accordingly, the Common Elements shall not be assessed separately but shall be assessed with the Units as provided pursuant to Colorado Revised Statutes Subsection 38-33.3-105(2).

The lien for taxes assessed to the Owner or Owners of a Unit shall be confined to his Individual Air Space Unit and to his appurtenant undivided interest in the Common Elements. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

Section 11.5 Affordable Housing Units. Certain Residential Units may be community housing units as described in Chapter 22 of the Code of the Town of Mt. Crested Butte and as deed restricted by the Owner thereof in accordance with such Chapter. Any Residential Unit so designated and subject to deed restriction pursuant to such provisions of the Code may be subject to limitations upon the amount of Assessments payable by the Owner of such Residential Unit. In the event of the applicability of any such limitation, the amount of any Assessment charged to such Residential Unit over the maximum permitted by the Town of Mt. Crested Butte shall be re-allocated to the other Units on the basis of such other Units' Allocated Interests.

ARTICLE 12 MECHANICS' LIENS

Section 12.1 Mechanics' Liens. Subsequent to the filing of the Map and recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a 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 Individual Air Space Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner or against the Common Elements, or any part thereof.

Section 12.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of Section 12.1 above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 12.2, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association in accordance with ARTICLE 8 above.

ARTICLE 13 USE RESTRICTIONS

Section 13.1 Use of Units. Residential, commercial, meeting and conference facility, and vehicular parking uses are contemplated within the Project, and any functions, activities and uses permitted under any zoning or other laws, rules or regulations applicable to Mt. Crested Butte Town Center are expressly allowed, subject to the restrictions set forth in this ARTICLE 13. No rules and regulations relating to the Project shall be adopted which unfairly discriminate against any use permitted within any Category of Units. All Owners will be subject to the rules and regulations of the Association.

Section 13.2 Commercial Uses. Commercial uses are permitted within the Project. Among the uses permitted under Section 13.1, are (i) ski and snowboard sales and rental shops, and (ii) restaurant/bars (including outdoor decks associated therewith). All Commercial Units shall be used only for the uses as specified within the PUD Guide, and in conformity with all other zoning laws, ordinances and regulations. In addition, Commercial Units and Conference Facility Units may be used for residential purposes upon compliance with the provisions relating to conversion of Units as provided in Section 3.3. Owners of Commercial Units may rent or lease such Units to others for these purposes. Commercial Units may be used by Declarant as a sales office, management office, rental management office, storage facility or such other uses as may be permitted under the Act.

Section 13.3 Residential Uses. All Residential Units shall be used for dwelling and lodging purposes only, in conformity with the PUD Guide and all zoning laws, ordinances and regulations. Owners of Residential Units may rent or lease such Units to others for these purposes and may use the Residential Units for home occupations which are permitted by applicable zoning codes. Notwithstanding the foregoing, Residential Units may be used by Declarant as a sales office, management office, rental management office, storage facility or such other uses as may be permitted under the Act.

Section 13.4 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 13.5 Use of Common Elements. There shall be no obstruction of, nor shall anything be kept or stored by any Owner or other party on any part of the Common Elements without the prior written approval of the Executive Board. Nothing shall be altered on, constructed in or removed by any Owner or other party from the Common Elements without the prior written approval of the Executive Board.

Section 13.6 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or, taking into account that the Project is a mixed-use project and the particular use involved, in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Executive Board. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the Property. No damage to or waste of the Common Elements shall be committed by any Owner, or an Owner's Guest, Lessee, or contract purchaser, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by the grossly negligent, reckless or intentional act or omission of such Owner, or the Owner's Guest or Lessee, or contract purchasers. To the extent that the loss resulting from any damage or waste is due to the negligent act or omission of an Owner, or an Owner's Guests or Lessees, then such Owner shall be liable to the Association for the amount of any applicable insurance deductible(s) and for any amounts in excess of insurance proceeds; provided, however, if such damage or waste is not covered by insurance the Owner

shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment as provided in ARTICLE 8 above.

ARTICLE 14 EASEMENTS

Section 14.1 Easement of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Elements, which easement shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this ARTICLE 14.

Section 14.2 Delegation of Use. Any Owner may delegate, in accordance with the Association Documents, the Owner's right of enjoyment in the Common Elements to the Owner's Guests and Lessees. The Executive Board may adopt rules and regulations limiting the number of Guests and invitees (who are not occupying a Unit with the Owner thereof) that may use the Common Elements at the invitation of an Owner at any one time. The Executive Board may also establish reasonable rules and regulations governing occupancy limits in Residential Units.

Section 14.3 Access to Commercial Units. Owners, Guests, Lessees, customers, and employees shall have a non-exclusive easement over and through the General Common Elements and the Limited Common Elements-Commercial for ingress and egress to Commercial Units.

Section 14.4 Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property including the PUD Plat, as contained in the Master Declaration and as shown on the recorded Map. The recording data for recorded easements, licenses and other title matters appurtenant to or included in the Property or to which any parts of the Property may become subject is set forth on the attached Exhibit D.

Section 14.5 Easements for Encroachments. The Project, and all portions of it, are subject to easements hereby created for encroachments between Units and the Common Elements as follows:

14.5.1 In favor of the Association so that it shall have no legal liability when any part of the Common Elements encroaches upon an Individual Air Space Unit;

14.5.2 In favor of each Owner of each Unit so that the Owner shall have no legal liability when any part of his Individual Air Space Unit encroaches upon the Common Elements or upon another Individual Air Space Unit; and

14.5.3 In favor of all Owners, the Association and the Owner of any encroaching Individual Air Space Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Building or any Unit constructed on the Property, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project. Encroachments may also include those created by remodeling or reconstruction provided such work is performed in accordance with plans approved by the Executive Board.

Section 14.6 Utility Easements. There is hereby created for use by third parties providing services to the Project a general easement upon, across, over, in and under all of the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity and cable or other communication systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone and other communication services to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications and telephone wires, circuits and conduits under the Property, all in order to serve the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners, the Association and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Executive Board shall have, and are hereby given, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. The easements provided herein shall be subject to such limitations as may be imposed by the Executive Board with regard to, among other things, location and placement of lines and equipment, conditions and hours of work and temporary storage of materials and equipment. No person or entity shall install any equipment, lines or fixtures to the exterior of any of the Buildings that are subject to this Declaration whether on railings, balconies, exterior walls or roof, without the express written consent of the Declarant during the Declarant Control Period or, thereafter, the Executive Board.

Section 14.7 Reservation of Easements, Exceptions and Exclusions. Declarant reserves for itself and its successors and assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements within the Common Elements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, and conduit installation areas, consistent with the condominium ownership of the Project for the best interest of the Owners or any Category thereof and the Association.

Section 14.8 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 14.9 Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, under and through the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 14.10 Drainage Easement. An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Project for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

Section 14.11 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Individual Air Space Units or may be conveniently accessible only through the Individual Air Space Units. The Owners of other Individual Air Space Units and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Individual Air Space Unit and to all Common Elements from time to time



during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Individual Air Space Unit. In addition, an easement is hereby created for such Common Elements as they currently exist within the Individual Air Space Units. Subject to the provisions of Section 7.4 above, damage to the interior of any part of an Individual Air Space Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repair within another Individual Air Space Unit at the instance of the Association or of Owners shall be a Common Expense.

Section 14.12 Declarant's Rights Incident to Construction and Marketing. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, across and through the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of the Project, including, but not limited to materials, equipment, machinery, construction trailers, temporary construction offices, sales offices and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, or family members, Guests, or Lessees of an Owner. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit or Units as sales offices, management offices or model residences so long as Declarant, or any Successor Declarant, continues to be an Owner or Lessee of such Unit. The use by Declarant of any Unit as a model residence, office or other use shall not affect the Unit's designation on the Map as a separate Unit.

Section 14.13 Right of Declarant and Association to Own Units and to Use Common Elements. An easement is hereby reserved by Declarant for itself and its successors and assigns and granted to the Association and its officers, agents, employees, successors and assigns to maintain offices, storage areas, conference areas and recreational areas for use by the Association within the Common Elements subject to all rules and regulations established under this Declaration and the Master Association Documents. The Association shall also have the right (but not the obligation) to purchase and own any Unit for the purpose of maintaining an office for the Association or for any other use that the Association determines is consistent with the operation of the Project. The costs and carrying charges incurred by the Association in purchasing and owning any such Unit shall be Common Expenses.

Section 14.14 Remodeling Easement. Declarant, for itself and its successors and assigns, retains a right and easement in and about the Building for the construction and installation of any duct work, additional plumbing or other additional services or utilities in the Common Elements in connection with the improvement or alteration of any Unit, including the right of access to such areas of the Common Elements as is reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Executive Board shall be final.

Section 14.15 Reservation for Expansion. Declarant hereby reserves to itself and the Association in all future phases of the Project an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress to and egress from other properties abutting and contiguous to the Property, and for use of the Common Elements as may be reasonably necessary or incident to the construction of improvements on the Units or other improvements on the Property or other property owned or controlled by Declarant; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Project by the Owners. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado.



Section 14.16 Easement for Master Common Areas. Declarant reserves for itself and its successors and assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, and/or to convey by license, easement or otherwise to the Master Association an interest in any Unit, portion of the Property and the Common Elements in order that such Unit, portion of the Property or the Common Elements shall be deemed a Master Common Area subject to the maintenance and control of the Master Association pursuant to the Master Declaration in accordance with the terms of any instrument creating such interest, in accordance with its governing documents and in accordance with applicable law.

Section 14.17 Easement for Lobby Access. Declarant hereby reserves for itself and for the Association, all Owners, and the Guests and Lessees of the Owners, a perpetual, nonexclusive easement for pedestrian access and service delivery access over and across Unit C002, C190, and CF100 of Mountaineer Square, for purposes of ingress and egress to and from the Units and the Common Elements of the Project. This easement shall be a portion of the Common Elements of the Project. The Owner of Units C002, C190, and CF100 shall at all times, subject to reasonable security measures and key control as described in this Declaration, make reasonable portions of such Units available for access pursuant to this easement. The Owner of Units C002, C190, and CF100 shall have the right to restrict or prohibit access pursuant to the easement created by this Section 14.17, at reasonable times and so long as reasonable alternative access is provided to the Owners, for purposes of maintenance, repair or renovation of such Unit(s) or any furniture, fixtures and equipment located within such Unit(s) .

Section 14.18 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this ARTICLE 14, even though no specific reference to such easements or to this ARTICLE 14 appears in the instrument for such conveyance.

ARTICLE 15 ASSOCIATION AS ATTORNEY-IN-FACT

Section 15.1 Appointment. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place and stead for the purpose of dealing with the Project upon its damage, destruction, condemnation or obsolescence as provided below in ARTICLE 16, ARTICLE 17, and ARTICLE 18. In addition, the Association, or any insurance trustee or substitute insurance trustee designated by the Association or if the power it appoint an insurance trustee has been delegated to the Managing Agent, the Managing Agent, is appointed as attorney-in-fact under this Declaration for the purpose of purchasing and maintaining insurance under ARTICLE 10 above, including: (a) the collection and appropriate disposition of the proceeds of such insurance; (b) the negotiation of losses and the execution of releases of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose. The Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the attorneys-in-fact as provided above. Each Owner's appointment of the Association as attorney-in-fact as provided in this Section is a power coupled with an interest, and no further document or instrument is necessary to evidence the Association's appointment.

Section 15.2 General Authority. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.



ARTICLE 16 DAMAGE OR DESTRUCTION

Section 16.1 The Role of the Executive Board. In the event of damage to or destruction of all or part of the General Common Elements, or other Property covered by insurance written in the name of the Association under ARTICLE 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged areas of the Project, including, without limitation, the floor coverings, fixtures and appliances initially installed therein by Declarant, and replacements thereof installed by the Owners up to the value of those initially installed by Declarant, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Owners in the Units unless covered by insurance obtained by the Association. Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating of his or her Unit. To the extent that the damage or destruction is due to the act or omission of an Owner, any member of an Owner's Guests or Lessees, then such Owner shall be liable to the Association in accordance with Section 7.4 above.

Section 16.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Project, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Project damaged or destroyed. "Repair and reconstruction" as used in this ARTICLE 16 shall mean restoring the damaged or destroyed part of the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Individual Air Space Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

Section 16.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Project damaged or destroyed. As attorney-in-fact for the Owners, the Association may, subject to requirements for the approval of special Assessments provided by law and this Declaration, take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary in connection with that action.

Section 16.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any casualty or hazard insurance shall be used for the purpose of repair, replacement and reconstruction.

Section 16.5 Insurance Proceeds Sufficient to Repair. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association as attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and restoration of the improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 16.6 Insurance Proceeds Insufficient to Repair; Special Assessment; Remedies for Failure to Pay Special Assessment. If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special Assessment to be made against all of the Owners and their Units. Any such special Assessment shall be a Common Expense in accordance with Section 8.6 above and shall be due and payable within thirty (30) days after written notice. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the special Assessment.



Any Assessment provided for in this Section shall be a debt of each Owner and a lien on the Owner's Unit and may be enforced and collected as provided in ARTICLE 8 above. In addition, the Association as attorney-in-fact shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such special Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this Section. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at the Maximum Rate on the amount of the special Assessment and all reasonable attorneys' fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

16.6.1 For payment of real property ad valorem taxes, special assessment liens duly imposed by a governmental subdivision and customary expenses of sale;

16.6.2 For payment of the balance of the lien of any First Mortgage affecting the Unit subject to any priority lien granted to the Association by law;

16.6.3 For payment of unpaid Master Association assessments, interest, costs, late charges, expenses and attorneys' (and legal assistants') fees;

16.6.4 For payment of unpaid Association Assessments, interest, costs, late charges, expenses and attorneys' (and legal assistants') fees;

16.6.5 For payment of junior Mortgages affecting the Unit in the order of and to the extent of their priority; and

16.6.6 For payment of the balance remaining, if any, to the Owner of the Unit.

Section 16.7 Repairs. All repairs and reconstruction contemplated by this ARTICLE 16 shall be performed substantially in accordance with this Declaration, the Map and the original plans and specifications for the Project, unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Association Documents.

Section 16.8 Notice of Damage or Destruction. In the event that any portion of the Project encompassing more than one Individual Air Space Unit is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

ARTICLE 17 OBSOLESCENCE

Section 17.1 Adoption of Plan; Rights of Owners. The Owners representing sixty-seven percent (67%) or more of the total number of votes entitled to be cast on Association matters, including a majority of the total votes allocated to each of the Residential Owners, the Commercial Owners, the Conference Facility Owners and the Parking Owners, may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction thereof. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as a Common Expense.

Section 17.2 Sale of Obsolete Units. The Owners representing sixty-seven percent (67%) or more of the total number of votes entitled to be cast on Association matters, including a majority of the

total votes allocated to each of the Residential Owners, the Commercial Owners, the Conference Facility Owners and the Parking Owners, may agree that the Units are obsolete and that the Project should be sold. In such instance, the Association shall immediately record in the Office of the Clerk and Recorder of Gunnison County, Colorado, a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map and the articles of incorporation and bylaws of the Association. Unless otherwise agreed in writing by all the Owners, the sale proceeds (and any insurance proceeds under ARTICLE 16 above) shall be apportioned among the Owners in proportion to each Owner's Allocated Interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit, as the case may be. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Subsections 16.6.1 through 16.6.6 above.

ARTICLE 18 CONDEMNATION

Section 18.1 Consequences of Condemnation. If, at any time or times during the continuance of the Project 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 or in avoidance of condemnation, then all compensation, damages or other proceeds of condemnation, the sum of which is referred to as the "condemnation award" below, shall be payable to the Association, and the provisions of this ARTICLE 18 shall apply.

Section 18.2 Complete Taking. In the event that the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the condominium ownership pursuant to this Declaration shall terminate. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. Such award shall be apportioned among the Owners and the Mortgagees on the basis of the Allocated Interest in the Common Elements appurtenant to the Unit in which such Owners and Mortgagees have an interest; provided, however, that if a standard different from the value of the Project as a whole is employed to measure the condemnation award in the negotiation, judicial decree or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall, as soon as practical, determine the share of the condemnation award to which each Owner and Mortgagee is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practical for the same purposes and in the same order as is provided in Subsections 16.6.1 through 16.6.6 above.

Section 18.3 Partial Taking. In the event that less than the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the condominium ownership under this Declaration shall not terminate. Each Owner of a Unit so taken or condemned (and Mortgagee holding an interest in such Owner's Unit) shall be entitled to a share of the condemnation award to be determined under the following provisions. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. As soon as practical, 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, unless otherwise required under the Act, as follows:

18.3.1 The total amount allocated to a taking of or injury to the Common Elements shall be apportioned among Owners and their Mortgagees on the basis of each Owner's undivided interest in



the General Common Elements, Limited Common Elements-Residential, or Limited Common Elements-Commercial;

18.3.2 The total amount allocated to severance damages shall be apportioned to the Owners and Mortgagees of those Units which were not taken or condemned;

18.3.3 The respective amounts allocated to the taking of or injury to a particular Unit or to improvements an Owner has made within the Owner's own Unit shall be apportioned to the Owner and Mortgagees of that particular Unit involved; and

18.3.4 The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under 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. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

Section 18.4 Reorganization. In the event a partial taking results in the taking of an Individual Air Space Unit, the Owners thereof shall automatically cease to be members of the Association, and their ownership interests in the Common Elements shall terminate and vest in the Owners of the remaining Units. Thereafter, the Association shall reallocate the ownership, voting rights and Assessment ratios 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 the remaining Individual Air Space Units for the amendment of this Declaration. Such reallocation shall be approved unless the Owners representing sixty-seven percent (67%) or more of the total number of votes entitled to be cast on Association matters, including a majority of the total votes allocated to the Residential Owners, majority of the total votes allocated to the Commercial Owners, a majority of the Conference Facility Owners, and a majority of the Parking owners vote to disapprove such reallocation.

Section 18.5 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in ARTICLE 16 above.

Section 18.6 Notice of Condemnation. In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

ARTICLE 19 OTHER ASSOCIATION MATTERS

Section 19.1 Master Association Matters. Each Owner, by accepting a deed to a Unit, recognizes that (a) the Project and all of the Units are subject to the Master Association Documents, (b) by virtue of his or her ownership of a Unit, he or she has become a member of the Master Association, (c) such Owner is subject to any rules and regulations of the Master Association, and (d) pursuant to the Master Association Documents, an Owner is a member of a specified class of ownership within the Master Association and is entitled to all of the benefits and subject to all of the burdens of such membership. Each Owner, by accepting a deed to a Unit, acknowledges that he or she has received a copy of the Master Declaration and the articles of incorporation, bylaws and rules and regulations of the Master Association. Each Owner agrees to perform all of his or her obligations as a member of the Master Association as they may from time to time exist, including, but not limited to, the obligation to pay all assessments as required under the Master Association Documents.



Section 19.2 Enforcement of Master Association Documents.

19.2.1 The Association shall have the power, subject to the primary power of the executive board of the Master Association, to enforce the covenants and restrictions contained in the Master Association Documents, but only as said covenants and restrictions relate to the Project, and to collect assessments on behalf of the Master Association.

19.2.2 This Declaration is intended to supplement the Master Association Documents as they apply to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration and the bylaws or articles of incorporation of the Association, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Association Documents. The Association and all committees thereof shall also be subject to all superior rights and powers that have been conferred upon the Master Association pursuant to the Master Association Documents. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Association.

Section 19.3 Architectural Control.

19.3.1 No addition, change or alteration to the General Common Elements, and no exterior or structural addition, change or alteration to any Unit or Limited Common Element (including the construction of any additional skylight, window, awning or door or the installation or attachment of any equipment or fixture to the exterior of any of the Buildings) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to external design, color and location in relation to surrounding structures and topography by the Executive Board.

19.3.2 Interior, non-structural changes or alteration of Units that are not visible or discernable from the exterior of a Unit may be undertaken solely by the Owner thereof.

19.3.3 The alterations and changes described in this Section shall also be in compliance with and have received all approvals required by the Master Declaration and any applicable zoning and other laws, rules and regulations, including the rules and regulations promulgated by the Association.

Section 19.4 General Reservation. Subject to any applicable restrictions under the Act, Declarant reserves the right to dedicate any access roads and streets serving the Property for and to public use and to allow such street or road to be used by owners of adjacent land.

Section 19.5 No Use of Trademark. The term "Mt. Crested Butte Town Center" and "Mountaineer Square" are trademarks or service marks of Mt. CB Real Estate, LLC, a Colorado limited liability company. Each Owner, by accepting a deed to a Unit, covenants and agrees that such Owner shall not use the marks "Mt. Crested Butte Town Center" or "Mountaineer Square" or designs or logos related to such marks (except to identify the location of a business or residence within Mountaineer Square) without the prior written permission of Mt. CB Real Estate, LLC, a Colorado limited liability company.

Section 19.6 Acknowledgments. Each Owner is hereby advised of the following matters affecting the Project and Mt. Crested Butte Town Center and the Owners' use and enjoyment thereof:

19.6.1 The Project is benefited by the fact that it is located near or adjacent to the Crested Butte Ski Area (the "Ski Area"). The Ski Area represents a unique and desirable amenity that includes many year-round activities; as such, the Ski Area may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction,



operation, use and maintenance thereof. The activities associated with the Ski Area include, without limitation: (i) vehicular and non-vehicular traffic, including, without limitation, (a) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests of Mt. Crested Butte Town Center over, around and through the Ski Area and Mt. Crested Butte Town Center, and (b) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Area, including, without limitation, (a) construction, operation and maintenance of Ski Area access roads, snow-making equipment and chair lifts, gondolas and other skier transportation systems, and (b) operation of snow-grooming vehicles and equipment and safety and supervision vehicles; and (iii) activities relating to the use of the Ski Area, including, without limitation, skiing, snow boarding, hiking, horseback riding, bicycling and other recreational activities.

19.6.2 Roads within Mt. Crested Butte Town Center are or may be subject to restricted or gated access limitations.

19.6.3 Substantial construction-related activities relating to the development of the Project or other development within or near Mt. Crested Butte Town Center may cause considerable noise, dust and other inconveniences to the Owners.

19.6.4 Properties located within Mt. Crested Butte Town Center may be developed pursuant to the land uses and restrictions set forth in the PUD Guide with no representation being made herein concerning the planned uses of such other properties. The zoning for Mt. Crested Butte Town Center is established and governed by the PUD Guide. Any amendment of the PUD Guide requires approval by the Town of Mt. Crested Butte. Each Owner acknowledges and agrees that such Owner has not relied upon any statements or representation regarding Mt. Crested Butte Town Center or any other properties except for the statements and representations expressly set forth in this Declaration and the PUD Guide. Each Owner further acknowledges and agrees that such Owner will not take any action to impair or delay any development of real property governed by the PUD Guide so long as such development complies with the PUD Guide.

19.6.5 No interest in or right to use any amenity located near the Project, such as swimming pools, spas, golf facilities, ski facilities, fitness facilities or the like, shall be conveyed to any Owner pursuant to this Declaration. The owners of any facilities that are not part of the Project shall have the right, in their sole discretion, to remove, relocate, discontinue operation of, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any Owners.

19.6.6 Declarant is not the operator of the Ski Area, and accordingly Declarant cannot make any representations relating thereto. Neither Declarant nor any of its employees or agents have made any representations regarding the opening or closing dates of the Ski Area in any given year. The operator of the Ski Area may decide, in its sole discretion, whether and when any or all of the chairlifts (including those that serve Mt. Crested Butte Town Center) within the Ski Area should be operated.

19.6.7 Ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to, (a) dripping water onto decks and porches from snow melt, (b) snow and ice build-up on decks, roofs, gutters and porches during winter months, (c) the need to open windows to cool a Unit during certain summer periods, in that due to the temperate summer climate air conditioning may not be provided in the Building, and (d) other inconveniences arising from the variable weather conditions in the Rocky Mountains.

19.6.8 Use of wood burning fireplaces, stoves and other devices is restricted within Mt. Crested Butte Town Center by governmental regulation.

ARTICLE 20 DECLARANT'S RIGHTS REGARDING TRANSFER

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

ARTICLE 21 ALTERNATIVE DISPUTE RESOLUTION

Section 21.1 Agreement to Avoid Litigation. The Declarant, the Association, their respective officers, directors and committee members, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Project, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described herein ("Claims") shall be resolved using the procedures set forth below prior to filing suit in any court, and the procedures set forth in this ARTICLE 21 shall be a jurisdictional prerequisite to the filing of any action at law or in equity, in any court whatsoever, with respect to all Claims except those expressly identified in Section 21.2 and not being subject to the provisions of this ARTICLE 21.

Section 21.2 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Association Documents, or the rights, obligations and duties of any Bound Party under the Association Documents or relating to the design or construction of improvements on the Project shall be subject to the provisions of this ARTICLE 21.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this ARTICLE 21:

21.2.1 Any suit by the Association against any Bound Party to enforce the provisions of ARTICLE 8 (Assessments).

21.2.2 Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the architectural standards and use restrictions and rules;

21.2.3 Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Association Documents;

21.2.4 Any suit in which any indispensable party is not a Bound Party; and

21.2.5 Any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required below.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth below.

Section 21.3 Mandatory Procedures.

21.3.1 Notice. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) (collectively, the “Parties”) shall notify each Respondent in writing (the “Notice”), stating plainly and concisely:

- 21.3.1.1 The nature of the Claim, including the Parties involved and Respondent’s role in the Claim;
- 21.3.1.2 The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- 21.3.1.3 Claimant’s proposed remedy; and
- 21.3.1.4 That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

21.3.2 Negotiation and Mediation.

21.3.2.1 The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Executive Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

21.3.2.2 If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of a reputable and knowledgeable mediation group providing such services in Gunnison County, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Gunnison County, Colorado, area.

21.3.2.3 If Claimant does not submit a claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

21.3.2.4 Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that the mediation was to be mediated.

21.3.2.5 Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand (“Settlement Demand”) to the Respondent and the Respondent shall make a final written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

21.3.3 Allocation of Costs of Resolving Claims.



21.3.3.1 Subject to subsection 21.3.3.2 below, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting any subsequent proceedings ("Post Mediation Costs").

21.3.3.2 Any award of a court which is final and subject to no further right of appeal (the "Award"), which is more favorable to Claimant than Claimant's Settlement Demand, shall add Claimant's Post Mediation costs to the Award, such costs to be borne equally by all Respondents. Any Award, which is equal to or less favorable to Claimant than any Respondent's Settlement Offer, shall award to such Respondent its Post Mediation Costs.

Section 21.4 Claim for Damages. Damages alleged or awarded in connection with a Claim shall be limited to actual damages. No punitive, incidental, consequential or other damages shall be claimed or awarded.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ANY CLAIMS, GRIEVANCES OR DISPUTES AGAINST DECLARANT ARISING OUT OF OR RELATING TO THE DESIGN OR CONSTRUCTION OF IMPROVEMENTS ON THE PROJECT SHALL REQUIRE NOTIFICATION TO DECLARANT IN WRITING AND PROVIDE FOR A REASONABLE AMOUNT OF TIME FOR DECLARANT TO CORRECT THE DEFECT BEFORE ANY CLAIM MAY BE MADE.

ARTICLE 22 EXPANSION AND WITHDRAWAL

Section 22.1 Phasing. The Project may be developed in phases pursuant to the Act. In addition, Declarant reserves the right for itself and any Successor Declarant to develop additional phases and in such event to subject all or any part of the Expansion Property to the provisions of this Declaration as may be necessary or appropriate for such purpose.

Subsequent phases may consist of additional Units, parking, common elements, recreational facilities, or some combination thereof. Pursuant to this ARTICLE 22 and the Act, Declarant reserves the right to vary its phasing plans and there shall be no time limit during which Declarant must complete its phasing plan. Declarant reserves the right to submit additional phases, if any, to condominium use in any sequence. There are no assurances that any subsequent phase of the Project will be added.

Additional phases may be created by Declarant by the filing for record by Declarant in the Office of the Clerk and Recorder of Gunnison County, Colorado, of one or more Supplemental Declarations and Supplemental Maps. The documents for a particular phase will be recorded prior to the closing of the purchase of any Unit in that phase. Moreover, in accordance with the Act, Declarant reserves all rights, in its sole discretion, to vary the phasing plan of the Project with respect to phase boundaries, plot plans, floor plans, Unit types or Categories, unit mixes, number of Units, and recreational areas and facilities with respect to each subsequent phase.

Section 22.2 Reservation of Expansion and Withdrawal Rights.

22.2.1 Declarant reserves the right for itself and any Successor Declarant to subject all or any part of the Expansion Property to the provisions of this Declaration and thereby expand the Property to add additional Units, subject to the maximum limitations set forth in Section 3.1, and to expand the Common Elements.

22.2.2 Declarant reserves the right for itself and any Successor Declarant to further develop the Development Property. Declarant shall be entitled to construct, at its own cost, additional

Buildings on the Development Property, which may contain up to a maximum of seven hundred fifty (750) additional Units and any Common Elements related thereto. In constructing the additional Units and any related improvements on the Development Property, Declarant shall be entitled to modify the boundaries of the Common Elements constituting the Development Property as shown on the Map. Until such time as Declarant shall record appropriate Supplemental Declarations and Supplemental Maps creating additional Units and Common Elements within all or any portion of the Development Property, Declarant shall have the right to exclusive possession and control of the Development Property.

22.2.3 Subject to those restrictions set forth in Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the Project and the provisions of this Declaration.

22.2.4 Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the Project and from the provisions of this Declaration any real property subjected to this Declaration by a duly recorded Supplemental Declaration and Supplemental Map prior to the time of a sale of a Unit comprising a portion of the real property described in said Supplemental Declaration and Supplemental Map.

Section 22.3 Supplemental Declarations and Supplemental Maps. Expansion of the Property and the Project may be accomplished by the filing for record by Declarant in the Office of the Clerk and Recorder of Gunnison County, Colorado, of one or more Supplemental Declarations and of a Supplemental Map(s) depicting such Expansion Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion determines. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration. Without limiting the generality of the foregoing, it shall be permissible for Declarant to submit individual condominium units created upon all or any portion of the Expansion Property to this Declaration without submitting all such condominium units hereto.

Section 22.4 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units comprising part of the Property plus any additional Units added by a Supplemental Declaration or Declarations and Supplemental Map or Maps, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

Section 22.5 Declaration Operative on New Units.

22.5.1 The new Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the Supplemental Declaration(s) describing the Expansion Property and Supplemental Map(s) of public record in the Office of the Clerk and Recorder of Gunnison County, Colorado.

22.5.2 It is contemplated that additional Units will be committed to this Declaration, but Declarant and any Successor Declarant shall have no affirmative obligation to construct any additional Units or, if improvements are constructed upon the Expansion Property, to submit same to the provisions of this Declaration. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any



Successor Declarant, as described herein, shall apply to all Units that are added to this Declaration in accordance with these provisions relating to enlargement thereof.

22.5.3 No rights of any character of any owner in units in the Expansion Property shall attach until a Supplemental Declaration and Supplemental Map are filed of record annexing the units constructed in such area to the Project. Upon the recording of such Supplemental Declaration and Supplemental Map, the Units located in the area shall be deemed to be governed in all respects by the provisions of this Declaration.

Section 22.6 Effect of Expansion.

22.6.1 Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and Supplemental Map(s) thereof, the apportionment of Assessments for each Unit shall automatically be adjusted to reflect the then current respective undivided interest in the Common Elements appurtenant to each Unit. Such adjustment shall be reflected and set forth in the Supplemental Declaration.

22.6.2 Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Map or is the owner of a Unit constructed in the Expansion Property) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Elements, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Map shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

Section 22.7 Termination of Expansion and Development Rights.

The rights reserved to the Declarant for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights") shall expire thirty-five (35) years from the date of recording this Declaration, unless the Expansion and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the Expansion and Development Rights by Declarant.

ARTICLE 23 DURATION OF COVENANTS AND AMENDMENT

Section 23.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 23.2 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon approval of Owners representing sixty-seven percent (67%) or more of the Allocated Interest appurtenant to all Units at a meeting of the Owners called for that purpose or by written consent. In addition, (a) a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to any Association Documents to the extent necessary to correct a factual error, (b) any proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, in addition to the approval requirements otherwise set forth herein. In addition, the Executive Board has the right to amend this Declaration pursuant to the provisions of Section 38-33.3-217(7) of the Act. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under the Act including, without limitation, 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.

Section 23.3 Revocation. This Declaration shall not be revoked or terminated, except as provided in Section 18.2 regarding total condemnation, without the consent of Owners holding more than sixty-seven percent (67%) of the Allocated Interests appurtenant to all Units at a meeting of the Owners called for that purpose, evidenced by a written instrument duly recorded.

Section 23.4 Recording of Amendments. Any amendment to this Declaration must be executed by the President of the Association and recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment or that no approval of the Owners was necessary.

ARTICLE 24 MISCELLANEOUS

Section 24.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act. No rights of Declarant under the Association Documents may be abridged without the consent of Declarant.

Section 24.2 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 24.3 Conflict of Provisions. In case of any conflict between this Declaration and the Master Association Documents, the Master Association Documents shall control. In case of any conflict between this Declaration and the articles or the bylaws of the Association, this Declaration shall control. In case of any conflict between the articles and the bylaws, the articles shall control.

Section 24.4 Nonwaiver. Failure by Declarant, the Association or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 24.5 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

Section 24.6 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 24.7 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.



EXECUTED as of the date first written above.

DECLARANT:

MT. CB REAL ESTATE, LLC,
a Colorado limited liability company

By: [Signature]
Name: Michael Kroatz
Title: Vice President - Real Estate & Development

STATE OF COLORADO)
)ss.
County of Gunnison)

The foregoing instrument was acknowledged before me this 3rd day of April, 2007, by Michael Kroatz as Vice President of Mt. CB Real Estate, LLC, a Colorado limited liability company.
Real Estate & Development

Witness my hand and official seal. My commission expires: 03.26.2009

[Signature]
Notary Public





JOINDER OF LENDER

The undersigned, being the Lender under the Deed of Trust bearing Reception No. 559729 and the Assignment of Leases and Rents bearing Reception No. 559730 encumbering the Property set forth in Exhibit A, as amended and supplemented from time to time (the "Deed of Trust"), for itself and its successors and assigns, acknowledges, consents to and approves the foregoing Declaration of Condominium for Mountaineer Square, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by this Declaration.

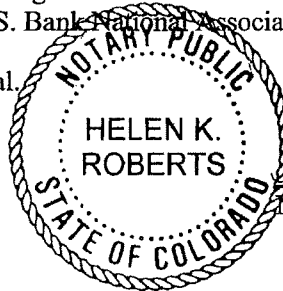
U.S. Bank National Association, a national banking association

By: Karen P Klerman
Name: Karen P Klerman
Title: Vice President

STATE OF COLORADO)
County of Denver)ss.
)

The foregoing instrument was acknowledged before me this 5th day of April, 2007, by Karen P Klerman as Vice President of U.S. Bank National Association, a national banking association.

Witness my hand and official seal.
My commission expires:



Helen K Roberts
Notary Public

My Comm. Expires 10/24/2010

EXHIBIT A

TO DECLARATION OF CONDOMINIUM FOR MOUNTAINEER SQUARE

LEGAL DESCRIPTION OF PROPERTY

**Lot SV-2, MT. CRESTED BUTTE TOWN CENTER, according to the Plat thereof
recorded August 12, 2005, bearing Reception No. 556853,**

Town of Mt. Crested Butte,

County of Gunnison,

State of Colorado.


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EXHIBIT B

**TO DECLARATION OF CONDOMINIUM FOR MOUNTAINEER SQUARE
 ALLOCATED INTERESTS**

Interest Allocation by Class	
Unit Class	Interest
Residential	68.51%
Commercial	16.43%
Parking	10.00%
Conference Facility	5.06%
Total	100.00%

Parking Unit	Allocated Interest- Parking	ALLOCATED INTEREST
P001	100%	10.00%

Conference Facility Unit	Allocated Interest- Conference Facility	ALLOCATED INTEREST
CF100	100%	5.06%

Parking and Conference Subtotal	15.06%
Commercial & Residential Allocation	84.94%


The formula for determining the Allocated Interest of each Unit is as follows:

1. All Parking Units, collectively, shall have a 10% Allocated Interest. Such 10% Allocated Interest appurtenant to all Parking Units shall be further allocated among all Parking Units on an equal basis.
2. All Conference Facility Units, collectively, shall have an Allocated Interest calculated by dividing one-half of the total square foot area of all Conference Facility Units by the total square foot area (without reduction of the square foot area of the Conference Facility Units) of all Conference Facility Units, Residential Units and Commercial Units. Such Allocated Interest appurtenant to all Conference Facility Units shall be further allocated among the Conference Facility Units such that each Conference Facility Unit shall have a percentage of the total Allocated Interest appurtenant to all Conference Facility Units which equal to the percentage derived by dividing the square foot area of the applicable Conference Facility Unit by the square foot area of all Conference Facility Units.
3. All remaining Allocated Interests not made appurtenant to the Categories of Parking Units and Conference Facility Units shall be allocated to all Residential Units and all Commercial Units, collectively. Such Allocated Interest appurtenant to all Residential Units and Commercial Units shall be further allocated among the Residential Units and the Commercial Units such that each such Unit shall have a percentage of the total Allocated Interest appurtenant to all Residential Units and Commercial Units which is the same as the percentage derived by dividing the square foot area of the applicable Residential Unit or Commercial Unit by the square foot area of all Residential Units and Commercial Units.

COMMERCIAL UNIT ALLOCATED INTERESTS

Commercial Unit	Allocated Interest-Commercial	ALLOCATED INTEREST		Commercial Unit	Allocated Interest-Commercial	ALLOCATED INTEREST
C001	1.0833%	0.1779%		C310	0.2496%	0.0410%
C002	11.8358%	1.9441%		C315	0.3151%	0.0518%
C003	1.9638%	0.3226%		C320	0.9575%	0.1573%
C004	1.4729%	0.2419%		C325	0.2923%	0.0480%
C005	9.3964%	1.5434%		C330	0.3813%	0.0626%
C006	0.6301%	0.1035%				
C007	0.9730%	0.1598%		C410	2.4778%	0.4070%
C008	0.6153%	0.1011%		C415	0.2076%	0.0341%
C009	1.0258%	0.1685%		C420	0.9575%	0.1573%
				C425	0.2923%	0.0480%
C100	2.8420%	0.4668%		C430	0.3306%	0.0543%
C110	4.1717%	0.6852%				
C120	4.0458%	0.6646%		C510	0.3125%	0.0513%
C130	4.6123%	0.7576%		C520	0.9575%	0.1573%
C140	7.6362%	1.2543%		C525	0.2923%	0.0480%
C150	3.2703%	0.5372%		C530	0.3122%	0.0513%
C160	7.0835%	1.1635%				
C170	8.4374%	1.3859%		C615	1.4675%	0.2410%
C180	10.0402%	1.6492%		C620	1.1264%	0.1850%
C190	2.8333%	0.4654%		C625	0.2760%	0.0453%
				C630	0.7517%	0.1235%
C210	0.2760%	0.0453%		C635	0.5505%	0.0904%
C215	0.3429%	0.0563%		C640	0.9296%	0.1527%
C220	0.9575%	0.1573%		C645	0.4276%	0.0702%
C225	0.2923%	0.0480%				
C230	0.2970%	0.0488%				
				Total Commercial	100.00%	16.43%

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RESIDENTIAL UNIT ALLOCATED INTERESTS

Residential Unit	Allocated Interest-Residential	ALLOCATED INTEREST
201	1.1169%	0.7652%
202	1.0879%	0.7454%
203	0.8564%	0.5867%
204	0.3332%	0.2283%
205	0.7515%	0.5149%
206	0.7608%	0.5213%
207	1.5987%	1.0953%
208	0.7884%	0.5401%
209	0.4081%	0.2796%
210	0.4641%	0.3180%
211	1.5423%	1.0567%
212	1.1101%	0.7606%
213	1.1019%	0.7549%
214	0.7301%	0.5002%
215	0.7281%	0.4989%
216	0.4644%	0.3182%
217	1.1176%	0.7657%
218	0.3463%	0.2372%
219	1.1403%	0.7813%
220	1.7378%	1.1906%
221	0.7724%	0.5292%
222	1.2034%	0.8245%
223	1.6908%	1.1584%
301	1.1171%	0.7654%
302	1.0896%	0.7465%
303	0.8500%	0.5823%
304	0.3482%	0.2386%
305	0.7821%	0.5358%
306	0.7608%	0.5213%
307	1.5998%	1.0960%
308	1.2757%	0.8740%
309	1.5382%	1.0539%
310	0.4627%	0.3170%
311	1.1018%	0.7549%
312	1.1101%	0.7606%
313	0.7308%	0.5007%
314	0.7281%	0.4989%
315	1.1100%	0.7605%
316	1.2414%	0.8505%
317	0.7636%	0.5232%
318	0.3463%	0.2372%
319	1.0977%	0.7521%
320	1.7303%	1.1855%
321	0.7724%	0.5292%
322	1.2203%	0.8360%
323	1.6908%	1.1584%

Residential Unit	Allocated Interest-Residential	ALLOCATED INTEREST
401	1.1169%	0.7652%
402	1.0896%	0.7465%
403	0.3512%	0.2406%
404	0.7729%	0.5295%
405	0.7608%	0.5213%
406	1.5998%	1.0960%
407	1.2740%	0.8729%
408	0.4611%	0.3159%
409	1.5382%	1.0539%
410	1.1101%	0.7606%
411	1.1018%	0.7549%
412	0.7281%	0.4989%
413	0.7308%	0.5007%
414	1.2403%	0.8498%
415	1.1101%	0.7606%
416	0.3469%	0.2377%
417	0.7636%	0.5232%
418	1.5993%	1.0957%
419	1.0976%	0.7520%
420	1.2203%	0.8360%
421	0.7724%	0.5292%
423	1.6912%	1.1587%
500	2.0306%	1.3912%
501N	1.5604%	1.0691%
501S	2.7902%	1.9116%
502	0.7433%	0.5093%
503	1.5382%	1.0539%
504	1.1101%	0.7606%
505	1.1018%	0.7549%
506	0.7281%	0.4989%
507	0.7247%	0.4965%
508	1.2403%	0.8498%
509	1.1101%	0.7606%
510	0.3463%	0.2372%
511	0.7636%	0.5232%
512	1.5951%	1.0928%
513	1.0977%	0.7521%
514	0.6197%	0.4246%
515	0.7724%	0.5292%
517	1.6912%	1.1587%

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Residential Unit	Allocated Interest-Residential	ALLOCATED INTEREST	Residential Unit	Allocated Interest-Residential	ALLOCATED INTEREST
601	2.4841%	1.7019%	606	1.0839%	0.7426%
602	0.6810%	0.4666%	607	1.0891%	0.7462%
603	0.8305%	0.5690%	608	1.1278%	0.7727%
604	1.0144%	0.6950%	609	0.4910%	0.3364%
605	1.8381%	1.2593%			
			Total Residential	100.00%	68.51%

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EXHIBIT C

**TO DECLARATION OF CONDOMINIUM FOR MOUNTAINEER SQUARE
LEGAL DESCRIPTION OF EXPANSION PROPERTY**

Cimarron Building

**Lot SV-3, MT. CRESTED BUTTE TOWN CENTER, according to the Plat thereof
recorded August 12, 2005, bearing Reception No. 556853,**

Town of Mt. Crested Butte,

County of Gunnison,

State of Colorado.

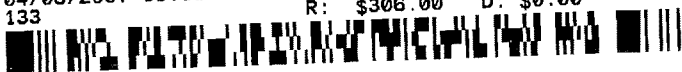
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EXHIBIT D

**TO DECLARATION OF CONDOMINIUM FOR MOUNTAINEER SQUARE
EASEMENTS, LICENSES AND OTHER TITLE MATTERS**

1. The Protective Covenants for the Lodge Sites Area recorded August 21, 1973 in Book 458, Page 47.
2. A right of way for ditches or canals constructed by the authority of the United States as reserved in the United States Patent for the subject property.
3. Terms and conditions in the Replat of Northern Lodge Sites Subdivision Agreement as recorded October 24, 1986 in Book 635 at page 28 through 59.
4. Any taxes, fees, assessments or charges by reason of the inclusion of subject property within the Mt. Crested Butte Water and Sanitation District and the Town of Mt. Crested Butte Special Improvement District.
5. Construction Management, Funding and Easement Agreement recorded April 11, 2005 at Reception No. 552532 and Resolution approving said agreement recorded at Reception No. 552533.
6. The following Easement Agreements for tie back and shoring facilities and utility easements under and along the Property:
 - 6.1 Easement Agreement from Mt. CB Properties, LLC recorded April 6, 2005 at Reception No. 552534.
 - 6.2 Easement Agreement from Mountain Associates, Inc., recorded April 8, 2005 at Reception No. 552719.
 - 6.3 Easement Agreement from Village Center Condominium Association recorded April 18, 2005 at Reception No. 552720.
 - 6.4 Easement Agreement from Colorado Properties, Limited Partnership recorded April 27, 2005 at Reception No. 552989.
 - 6.5 Utility Easement Agreement from Mountain Associates, Inc., recorded June 28, 2005 at Reception No. 555079.
7. Any and all easements and building envelopes as set forth on the Plat of Mt Crested Butte Town Center bearing Reception No. 556853.
8. The PUD Guide for Mt. Crested Butte Town Center bearing Reception No. 556861 as amended at Reception No. 571679.

9. The Subdivision Improvements Agreement recorded at Reception No. 556862.
10. Town of Mt. Crested Butte Ordinance No. 2, Series 2005 recorded August 12, 2005 at Reception No. 556848.
11. The Construction Management, Funding & Temporary Easement Agreement recorded August 12, 2005 at Reception No. 556850.
12. The Landscape and Improvement Easement Agreement recorded August 12, 2005 at Reception No. 556860.
13. The Public Notice for use of a fire lane and limited access easement in Book 671 at page 668.
14. The First Addendum to Easement Agreement in Book 660 at page 787.
15. The Community Declaration for the Mt. Crested Butte Town Center bearing Reception No. 573262.
16. Utility distribution easements.
17. Taxes and assessments for the current year and subsequent years.

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