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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TOWN NORTH CONDOMINIUMS

THIS DECLARATION is made and declared this 23rd day of July, 2004,  
by Town North, LLC, a Colorado limited liability company, herein referred to as "Declarant."

RECITALS

A. Declarant is the owner of certain real property situate in Mesa County, Colorado, known as the Town North Condominiums (hereafter referred to as the "Condominiums"), which are more particularly described at Exhibit A which is incorporated herein by reference.

B. Declarant desires to subdivide that real property into no more than fifty-four (54) separate condominium units as defined in section 38-33-103(1), C.R.S. The description or delineation of each such condominium unit, including each condominium unit's identifying number, is depicted on the attached Exhibit B which is incorporated herein by reference.

C. This Declaration is executed to impose on the described real property mutual beneficial restrictions under a general plan or scheme of improvement for the benefit of each and all of the included condominium units and of the common areas and of the future owners of those units and those common areas.

NOW, THEREFORE, Declarant hereby makes the following declaration of covenants, conditions and restrictions:

ARTICLE 1  
DEFINITIONS

1.1 "Allocated Interests" shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in Sections 4.3, 5.2 and 7.1 of this Declaration.

1.2 "Articles" shall mean and refer to the Articles of Incorporation of Town North Condominium Association, Inc.

1.3 "Association" shall mean and refer to Town North Condominium Association, Inc., a Colorado nonprofit corporation, formed for the purpose of being and constituting the entity for the furtherance of the interests of the Owners of property in Town North Condominiums and enforcing the restrictions set forth in this Declaration.

- 1.4 "Board" shall mean and refer to the Board of Directors of the Association.
- 1.5 "Buildings" shall mean and refer to any Building, including all fixtures and improvements thereto, situate on the Condominiums.
- 1.6 "Bylaws" shall mean and refer to the Bylaws of the Association.
- 1.7 "General Common Elements" means the totality of:
- 1.7.1 The real property which is part of the Condominiums, except for the Units;
  - 1.7.2 The Buildings, including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter, roof, main walls, slabs, elevator, elevator shaft, staircases, lobbies, halls, and all mechanical installations of the Buildings consisting of the equipment and materials making up any services such as power, light, gas, hot and cold water, heating air conditioning, and exterior security lighting, which exist for common uses, including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith, except for the individual air space in the Units;
  - 1.7.3 Those storage facilities that have been allocated by the Association as set forth in Section 3.2; and
  - 1.7.4 Any amenities and amenity areas, if any, sidewalks, walkways, fences, grass, shrubbery, trees, driveways, parking areas, garages, landscaping, irrigation systems, gardens, swimming pools now or hereafter located in the Condominiums.
  - 1.7.5 There shall be no limited common elements and no General Common Element shall be subsequently allocated as a limited common element.
- 1.8 "Condominiums" shall mean and refer to all of the real estate situate within the area described in Exhibit A.
- 1.9 "Declarant" shall mean and refer to Town North, LLC.
- 1.10 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.
- 1.11 "First Security Interest" shall mean a security interest (herein after defined) that has priority of record over all other recorded liens except those liens made superior by statute.

1.12 "Improvements" shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, swimming pools, plantings, trees, shrubs, signs, objects of art, mailboxes, irrigation facilities, such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Condominiums.

1.13 "Member" shall mean and refer to a person or entity which is a member of the Association.

1.14 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit which is a part of the Condominiums, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.15 "Person" shall mean any natural person, corporation, limited liability company, partnership, association, or any other entity or combination thereof.

1.16 "Plat" shall mean and refer to that certain plat of the Condominiums to be recorded in the Mesa County Clerk and Recorder's official records.

1.17 "Security Interest" shall mean an interest in real estate or personal property in the Condominiums, or any portion thereof, created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 5.10 hereof and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 hereof, "Security Interest" shall also mean and refer to any executory land sales contract wherein the administrator of Veterans Affairs, an officer of the United States of America is the seller, whether such contract is recorded or not, and whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignees, or a remote assignee, and the land records in the office of the Clerk and Recorder of the City and County of Mesa, Colorado, show the administrator as having the record title to the Unit.

1.18 "Security Interest Holder" means any person named as a mortgagee or beneficiary, or in a similar capacity, under any security interest.

1.19 "Unit" shall mean and refer to that part of the Condominiums owned in fee simple by the Owners. The boundaries of each Unit consist of the walls, floors and ceilings of each Unit

and the spaces, areas, improvements, and fixtures contained within the perimeter walls of each of the fifty-four (54) apartment units in the Buildings constructed on the real property. Each Unit and its identifying number is reflected on the attached Exhibit B. No additional Units will be created by Declarant. The maximum number of Units in the Condominiums shall be fifty-four (54).

## ARTICLE 2 GENERAL DECLARATION

2.1 Intent. By making the Declaration hereunder, Declarant specifically intends to enhance, perfect and preserve the value, desirability and attractiveness of the Condominiums and, to provide for the maintenance of the General Common Elements, the Improvements and the Buildings thereon in a manner beneficial to all Owners.

2.2 Estate Subject to Declaration. By this Declaration, Declarant expressly intends and does hereby subject the Condominiums to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Condominiums, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

2.3 Owners' Rights to General Common Elements. Every Owner shall have a right and easement of enjoyment in and to the General Common Elements which shall be appurtenant to and shall pass with the title to every Unit subject to the provisions of this Declaration and the Articles and Bylaws of the Association. Any Owner may only delegate, in accordance with the Bylaws, his or her right of enjoyment to the General Common Elements and facilities for the members of his or her family, his or her tenants, or contract purchasers who reside on the Condominiums. The Owners may not convey any General Common Elements to any person or entity other than a successor in interest to the Owners' Units.

2.4 Allocation of Allocated Interests. Each Unit shall be allocated a one fifty-fourth (1/54) interest in the General Common Elements and shall be responsible for a one fifty-fourth (1/54) share of all assessments provided for in Article 5 of this Declaration.

ARTICLE 3  
RESTRICTIONS ON USE

3.1 Building Restrictions.

AMENDED  
SEE PG 78

3.1.1 All Units shall have solid wood entrance doors with a minimum twenty (20) minute rating.

3.1.2 The Owners may make any improvements or alterations to their respective Units that do not impair the structural integrity, electrical systems or mechanical systems, or lessen the support of any General Common Element. No improvement or alteration shall be erected without the prior written approval of the Association. The Association's approval or disapproval must be provided within thirty (30) days of submittal of the Owner's plans and specifications. In the event the Association fails to approve or disapprove within thirty (30) days after sufficient plans and specifications have been submitted to it, approval will not be required. A majority vote of the Association is required for approval or denial of all proposed improvements.

3.1.3 No structure of a temporary character, trailer, teepee, tent, shack, garage, barn or other outbuilding shall be used on the Condominiums as a residence, either temporarily or permanently.

3.1.4 An Owner shall not change, modify, paint, decorate, alter or in any way make any change to any exterior wall, surface, roof, entry, landscaping, paving, trees, shrubbery or other Improvements without the approval of the Association.

3.2 Allocation of Storage Unites.

AMENDED  
SEE PG 508

3.2.1 The storage units which consist of \_\_\_\_\_ storage facilities, are set aside and allocated for the restricted use of fewer than all of the Units as follows: The Association shall lease the storage units to the Owners on a first come first serve basis under such terms and conditions as determined by the Association.

3.2.2 The Association shall not be responsible for damage, loss or theft of any Owner's property stored in the storage units.

3.3 Maintenance of Units, Buildings, Improvements, and General Common Elements.

3.3.1 The Owners, at their sole expense, shall keep, maintain and repair all portions of their Units in a neat, clean, attractive and well maintained condition, free from

the accumulation of trash or debris or visual deterioration. In the event the Owners fail to keep, maintain or repair their Units in accordance herewith, the Association shall conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner(s) on whose Unit the maintenance or repairs were conducted as a reimbursement assessment pursuant to Section 5.4 hereof.

3.3.2 The Owners shall not paint or otherwise decorate or change the appearance of any portion of the Buildings not within the walls of the Unit, unless the written consent of the Association is obtained. The Owners shall promptly report to the Association or its agent any defect or need for repairs or maintenance, the responsibility for remedying of which is with the Association. The Owners shall not make any alterations in the portions of the Unit or the Buildings which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Buildings without first obtaining the written consent of the Association.

AMENDED  
SEE PG 508

3.3.3 The Association shall keep, maintain and repair the Buildings, Improvements and the General Common Elements in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration.

3.3.4 The General Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided. By the acceptance of his or her deed or other instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the General Common Elements. Each Owner agrees not to institute any action therefor. Furthermore, each Owner agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the complying Owners to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the complying Owners incur in connection therewith.

3.3.5 Each Owner shall be entitled to exclusive ownership of his or her Unit. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

3.3.6 No Unit shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate in any Unit or the General Common

Elements. All garbage, rubbish and trash shall be disposed of in the designated trash recepticals located on the Condominiums.

3.3.7 The parking lot and walkways shall be surfaced with a hard surface such as asphalt or concrete.

3.4 Home Occupations and Offensive Activities.

3.4.1 No Unit or Building may be used for commercial purposes of any type whatsoever excepting for home occupations. For purposes of this section, "home occupations", shall mean an occupation by the resident conducted entirely within the Unit which does not entail the employment of third persons on the premises, does not entail the delivery of goods or services to customers upon the premises, and does not entail visits by customers to the premises. For example, but not by limitation, an insurance agent may use his or her Unit as a personal office so long as his or her customers are not permitted to come to the Unit; however, the establishment of a barber shop, massage room or a beauty shop would be prohibited.

3.4.2 No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his or her own vehicle.

3.4.3 No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Condominiums.

3.5 Restrictions on Occupants and Pets

→ AMENDED, SEE PG 78-79

3.5.1 At no time shall any Unit be occupied by more than one family.

3.5.2 No animals shall be allowed other than domestic pets. Not more than two (2) dogs and not more than any three (3) pets in cumulative total (including dogs) shall be kept on the premises and only then if they are kept solely as household pets for private use and not for commercial purposes. No dog shall weigh in excess of twenty-five (25) pounds. No such animal may be kept which is a nuisance or annoyance to other Owners. Household pets shall be contained in their Owner's Unit or on a leash and not permitted to run loose. At the request of any Owner, the Board of the Association shall determine whether a particular animal shall be considered a household pet, a nuisance, or whether the number of any such animals in any Unit is in compliance. Habitually barking dogs and vicious breeds are prohibited, at the sole discretion of the Association. No horses,

livestock, pigs, pot belly pigs, or ferrets of any type shall be kept in any Unit. Household pets shall be under the control of their owners at all times and their Owners shall immediately clean all animal waste generated from the household pets.

3.6 Parking.

AMENDED  
SEE PG 79

3.6.1 The parking lot shall be constructed so as to provide sufficient off street parking to accommodate two cars per Unit. *AMENDED TO 1.5 CARS*

3.6.2 No portion of the Condominiums, including the parking lot, shall be used as a parking, storage or accommodation area for any type of junk vehicles or vehicles under repair. Only those cars and trucks incidental to residential family use will be permitted within the Condominiums. No vehicles used for business, (other than normal passenger-type vehicles) shall be stored or permitted to remain on the premises.

3.6.3 No portion of the Condominiums, including the parking lot, shall be used as a parking, storage or accommodation area for any type of recreational vehicle or water craft, device or equipment including, but not limited to, any camper, all terrain vehicle, snowmobile, motor home, motorized dirt bike, or motorized or non-motorized boat.

3.7 Landscaping and Parking Lot and Sidewalk Repair and Maintenance.

3.7.1 Association shall be responsible for all grading, landscaping and planting, lawn maintenance, and irrigating necessary for the Condominiums. All vegetation shall be properly cultivated (including watering) and neatly trimmed, garbage and weed free.

3.7.2 No Owner shall remove, alter, injure or interfere in any way whatsoever with any tree, shrub or other landscaping or Improvement placed upon the Condominiums by Declarant or the Association.

3.7.3 Association shall be responsible for all parking lot and sidewalk repair and maintenance, including, but not limited to, paving, grading, surfacing, patching, repaving, replacing concrete and sealing asphalt, cleaning and snow removal.

3.8 Swimming Pool. The Owners and their tenants, invitees and guests shall comply with all of the Association's rules and regulations regarding the use of the swimming pool as the Association shall establish from time to time.

3.9 Rental of Units. All tenants or future tenants are subject to the covenants, conditions and restrictions of the Declaration. The mere rental of any Unit or the mere act of occupancy of any Unit shall signify that the covenants, conditions and restrictions set forth in



this Declaration are accepted. The Units shall not be rented by the Owners for transient or hotel purposes, which shall be defined as: (a) rental for a period less than thirty (30) days; or (b) any rental if the occupants of the Unit are provided customary hotel services. Other than the foregoing obligations and restrictions, the Owners shall have the absolute right to lease the Units, provided that the lease is made subject to the covenants, conditions and restrictions set forth in this Declaration.

AMENDED  
SEE PG 79

3.10 Signs. No sign of any kind shall be displayed to the public view on any Unit except one professional sign of not more than four (4) square feet, and a sign of not more than five (5) square feet advertising a Unit for sale or rent. Signs on the General Common Elements are governed by the Association.

3.11 Fences. No fence shall be erected on the Condominiums without the approval of the Association.

3.12 Easement for Maintenance and Entry. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner's Unit reasonably necessary for maintenance, repair and replacement of any General Common Elements and any other property or Improvements maintained, repaired or replaced by the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the General Common Elements, any other property, or any Unit, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. Further, each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible.

3.13 Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the General Common Elements, any other property, a Unit, or any Improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of Article 5 of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or

a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

3.14 Miscellaneous.

3.14.1 No portion of the Condominiums shall be used in any manner whatsoever to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances or other mineral of any type.

3.14.2 All facilities for permanent utilities service shall be kept or maintained underground, or in the original condition at such time the Unit are first conveyed to the Owner by Declarant.

3.14.3 No antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained out of doors, except as shall be permitted by the Association.

3.14.4 No hunting, shooting, trapping or harming of wildlife shall be permitted, it being the intent to conserve and protect all wildlife to the utmost.

3.14.5 No recreational vehicles, motorcycles, dirt bikes, off-road vehicles, etc. shall be operated in the development at any time except for ingress and egress to and from the development and upon established roads.

3.15 Utilities. There is hereby created a blanket easement upon, across, over and under the General Common Elements for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the General Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the General Common Elements without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the earlier of five (5) years after the first Unit is conveyed to an Owner other than Declarant or conveyance by Declarant of the last Unit to the

first Owner thereof (other than Declarant), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the General Common Elements.

3.16 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents and contractors of improvements, structures or signs necessary or convenient to the development, sale, operation or other disposition of the Units or Improvements situate within the Condominiums, provided that this exemption shall not be interpreted to impose limitations on the power of the Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

#### ARTICLE 4 THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

4.1 Purpose and Membership. By acceptance of a deed to a Unit, each Owner shall be a member of the Association, which is a Colorado nonprofit corporation, organized for the general purpose of being and constituting an entity for the furtherance of the mutual interests of the Owners of the Condominiums pursuant to this Declaration and the Articles and Bylaws, including without limitation, enforcement of the Declaration; owning, repairing and maintaining the General Common Elements; maintenance and use of any Units, Buildings and Improvements; levying and enforcing assessments to defray the cost and expenses of operation; and, providing other utilities and services pursuant to the Articles and Bylaws. The Condominiums are subject to the Colorado Common Interest Ownership Act. The business of the Association will be conducted according to the Act.

4.2 Directors of the Association. The affairs of this Association shall be managed by a board of three (3) Directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 4.3.3, below, the Board shall be managed by at least three (3) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

4.3 Voting Rights.

4.3.1 A membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

4.3.2 The Association shall have one class of voting membership, each Owner being entitled to vote one vote for each Unit owned upon matters subject to vote by the Members as provided in the Articles and Bylaws of the Association. A vote for each Unit

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SEE PG 79

shall be exercised as the Owner determines, but in no event shall more than one vote be cast with respect to any Unit.

4.3.3 From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of either sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant or two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board must be elected by Owners other than Declarant. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant.

#### 4.4 Limitation Upon Liability.

4.4.1 Indemnification of Officers and Board Members. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action of for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

4.4.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominiums, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Condominiums or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

4.5 Ownership and Maintenance.

4.5.1 The ownership, maintenance, repair and restoration of the General Common Elements, together with Improvements thereon, shall be vested solely in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing and restoring the General Common Elements and Improvements thereon shall be borne by the Owners as a regular assessment as provided in Section 5.2, hereof.

4.5.2 The Association shall further be charged with the maintenance, repair and restoration to any Improvement situate on any Unit provided the Owner thereof fails to repair, restore or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Section 5.4, hereof.

4.6 Duty of Association. The Association shall have the duty of maintaining and repairing all of the General Common Elements within the Condominiums. The cost of all such maintenance shall be a common expense to all of the Owners. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

4.7 Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and the Articles of Incorporation and Amendments, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.

4.7.1 Maintenance, repair and restoration of the General Common Elements, except only as otherwise provided.

4.7.2 The obtaining and maintaining of all required insurance as provided herein.

4.7.3 Collection of assessments for irrigation water and maintenance and repair of the irrigation system.

4.7.4 Collection of assessments for real property taxes and assessments.

ARTICLE 5  
ASSESSMENTS

5.1 Owner's Obligation. By accepting a deed to any Unit, each Owner agrees to pay to the Association all the assessments, to be fixed and levied from time to time as provided in the Declaration, the Articles and Bylaws. Such assessments, together with interest accruing thereon and the costs of collection in the event of a delinquency of payment, shall be the personal obligation of the person who is the Owner, or the persons who are jointly and severally the Owner, at the time the assessment was made.

5.2 Regular Assessments.

5.2.1 At the annual meeting each year, the Board shall estimate the cost and expenses to be incurred by the Association during the year in performing its functions, and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such year which is attributable to the operation and maintenance assessments for the prior year. The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the General Common Elements, which sums may include, among other things, sewer and water fees, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. The sum or net estimate so determined shall be assessed to the Owners as an operation and maintenance assessment by dividing the total estimate by the total number of Units and assessing the resulting amount to the Owner of each Unit. Assessments shall be paid in monthly installments due on or before the 10th day of each month.

5.2.2 Within ten (10) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners

to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

5.3 Special Assessments. If at any time during the fiscal year the regular assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy. The special assessment shall be assessed to the Owners by dividing the total estimate by the total number of residential Units and assessing the resulting amount to the Owner of each Unit, such assessment to be paid either in equal monthly installments over the balance of the remaining fiscal year, or in a lump sum upon billing as the Board shall determine.

5.4 Reimbursement Assessment. The Board may levy an assessment against any Owner as a result of such Owner's failure to restore or maintain his or her Unit. Such assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses incurred for the repair, maintenance or restoration of such Owner's Unit and shall be due and payable to the Association when levied.

5.5 Reserve Fund. The Association shall establish a reserve fund for the maintenance, repair and replacement of the Condominiums, which shall be no less than One Thousand Dollars (\$1,000.00) per Unit for a total of Fifty-Four Thousand Dollars (\$54,000.00). The first payment shall be made at the time of purchase of the Unit. The amount may be increased as determined by the Association and shall be funded through annual payments of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

5.6 Capital Improvements. In addition to regular and special assessments, the Association may levy, in any assessment year, a special assessment for the purposes of defraying in whole or in part the cost of any capital Improvement upon the Condominiums, including fixtures, landscaping or personal property related thereto, provided that such assessment shall have the assent of a majority of the members of the Association subject to the assessment.

5.7 Enforcement. In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

5.7.1 The Association may elect to accelerate and declare immediately due and payable the remaining balance of regular or special assessments for such fiscal year.

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5.7.2 The Association may bring a suit at law to collect the delinquent assessments, including any accelerated assessment. Any judgment rendered in such action shall include a sum for costs of suit, including a reasonable attorney's fees.

5.7.3 All delinquent assessments shall be a lien on the Owner's Unit as provided for in Section 5.9.

5.7.4 Beginning with the second month of delinquency, a five percent (5%) penalty will be added to all delinquent amounts each month until payments are current.

5.8 Out-of-State Owners Who Are Not Occupants. In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:

5.8.1 Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or

5.8.2 Pay the regular assessment pursuant to Section 5.2 hereof in advance by the 10th day of the first month of the fiscal year; or

5.8.3 Either or both of the immediately preceding subsections of Section 5.8 hereof.

5.9 Lien for Assessments.

5.9.1 The Association has a statutory lien on a Unit for an assessment levied against that Unit or for fines imposed against its Owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

5.9.2 Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and



record in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

5.9.3 A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments becomes due.

5.9.4 Unless the Declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

5.10 Priority of Association Lien.

5.10.1 A lien under this Article 5 is prior to all other liens and encumbrances on a Unit except:

(a) Liens and encumbrances recorded before the recordation of the Declaration;

(b) A First Security Interest on the Unit, which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the Unit.

5.10.2 A lien under this Section is also prior to the First Security Interest described in the preceding subsection 5.10.1(b) to the extent of an amount equal to the annual assessment based on a periodic budget adopted by the Association as provided above which would have become due, in the absence of an acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a non-judicial foreclosure either to enforce or to extinguish the lien. Notwithstanding anything herein to the contrary or anything in the Act to the contrary, if federal law applies, no liens for assessments shall be prior to the lien of a mortgage

insured or guaranteed by the FHA, VA or other Agencies to the extent required by such federal law.

5.10.3 This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of section 15-11-201, C.R.S., 1973, as amended.

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5.11 →  
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ARTICLE 6  
INSURANCE

6.1 Insurance. The Association shall maintain the following types of insurance on the General Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as common expenses. In addition, the Association may maintain such insurance on such other property as the Board of Directors may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the agencies with respect to their insurance, guaranty or purchase of security interests.

6.1.1 Property insurance for broad form coverage causes of loss, including Units (but not the finished interior surfaces of the walls, floors and ceilings of the Units); except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations and other matters normally excluded from property policies.

6.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the General Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the General Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

6.1.3 A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Condominiums and/or any Owner who controls or disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Units, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Condominiums to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph 6.1.3.

6.1.4 If any General Common Elements are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

(a) the maximum coverage available under the National Flood Insurance Program for all Condominium Buildings and other insurable property located within a designated flood hazard area; or

(b) one hundred percent (100%) of current replacement cost of all Condominium Buildings and other insurable property located within a designated flood hazard area.

6.1.5 In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature, as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, and coverage on fixtures, equipment and other personal property inside Units.

6.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any Such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

6.3 Deductibles. 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.

6.3.1 To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

6.3.2 Any loss to any Unit or to any General Common Elements which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, the Owner's tenants, family members, guests or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

6.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 6.1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 7.1 of Article 7 of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominiums is terminated.

6.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

6.6 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

6.7 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each space within a Unit, shall be the responsibility of the Owner of such Unit.

6.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the

Association. In making the aforesaid determination, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

6.9 Notice of Cancellation. If the insurance that is required to be carried by the Association, as provided in Section 6.1 of this Article, is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE 7  
DAMAGE OR DESTRUCTION

7.1 Damage or Destruction.

7.1.1 Any portion of the Condominiums which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Condominiums are terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (c) Eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild; or
- (d) Prior to the conveyance of any Unit to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Condominiums rightfully demands all or a substantial part of the insurance proceeds.

7.1.2 The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a General Common Expense. If the entire Condominiums are not repaired or replaced, the insurance proceeds attributable to the damaged General Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominiums, and except to the extent that other persons will be distributees, the

insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been taken by eminent domain, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

7.2 Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the General Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a special assessment in the aggregate amount of such insufficiency pursuant to Section 5.3 of Article 5 hereof, and shall proceed to make such repairs or reconstruction. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any Security Interest Holders of their respective Units. The assessment provided for herein shall be a debt of each Owner and a lien on the Owner's Unit and the Improvements thereon, and may be enforced and collected in the same manner as any assessment provided for in this Declaration.

7.3 Destruction of Units. If due to casualty, or for any other reason, the space within a Unit shall be destroyed or damaged, then the Owner thereof shall, within a reasonable time thereafter, not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, commence and diligently pursue repair and reconstruction of the space within a Unit, using any available personal insurance proceeds and personal funds of such Owner, unless the General Common Elements are not repaired and reconstructed as hereinabove provided.

The Condominiums are located in the City of Grand Junction, Colorado. The Condominiums are considered to be "non-conforming" pursuant to Section 3.8.A of the City of Grand Junction's Zoning and Development Code ("Code"). Owners are on notice that as the Condominiums are nonconforming, if the Condominiums are damaged by fifty percent (50%) or greater of its fair market value, based on a market appraisal performed by a certified appraiser, the Condominiums may be rebuilt to their existing density provided that: they register with Grand Junction's City Community Development Department in accordance with Section 3.8.A of the Code; all portions of the Condominiums being restored are not and were not on or over a property line; the number of dwelling units does not increase; the Condominiums and property are in compliance with all regulations of the Code, other than density; all construction is in compliance with current construction codes, such as the Fire and Building Codes; a building

permit is obtained within one year from the date of the damage; and the Certificate of Occupancy (or other final inspection) is issued within two years of the issuance of the building permit. Although the property shall retain the right to re-establish the same number of dwelling units, changes may be required to the size and type of units and the configuration of the structures in order to meet the other Code requirements.

ARTICLE 8  
PROPERTY RIGHTS IN THE GENERAL COMMON ELEMENTS

8.1 Owners' Easements. Subject to the provisions of Section 8.2 of this Article, every Owner shall have a nonexclusive right and easement of enjoyment in and to the General Common Elements, plus a right and easement of ingress and egress over, across and upon the General Common Elements, for the purpose of access, ingress and egress to and from his or her Unit and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to every Unit.

8.2 Extent of Owners' Easements. The rights and easements created hereby shall be subject to the following:

8.2.1 The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration; and

8.2.2 The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the General Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the General Common Elements to a Security Interest unless such is approved by Members casting at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant; and

8.2.3 The right of the Association to take such steps as are reasonably necessary to protect the General Common Elements against foreclosure; and

8.2.4 The right of the Association to promulgate, amend, repeal, re-enact and publish rules and regulations with which each Member shall strictly comply; and

8.2.5 The right of the Association to regulate and/or restrict vehicular parking, storage and repairs; and



8.2.6 The right of the Association to suspend the voting rights of a Member for any period during which any assessment against the Member's Unit or any other amount due from such Member to the Association remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Bylaws of the Association or the Association's rules and regulations; and

8.2.7 The right of the Association to dedicate or transfer all or any part of the General Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominiums shall not be deemed a transfer within the meaning of this subsection 8.2.7; and

8.2.8 The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

8.2.9 The right of the Association to close or limit the use of the General Common Elements while maintaining, repairing and making replacements in the General Common Elements.

8.3 Delegation of Use. Any Owner may delegate the Owner's rights of use of and access over the General Common Elements to the members of the Owner's family, the Owner's tenants, or contract purchasers who reside on the Owner's Unit.

8.4 New Additions to General Common Elements. The Association shall have the right to construct new additions to the General Common Elements. Ownership of any such additions to the General Common Elements shall be apportioned among all Units in proportion to the respective undivided interest in the General Common Elements appurtenant thereto. The General Common Expenses for any such additions to the General Common Elements shall be apportioned among all Units as provided in Article 5 hereof. The construction of new additions

to the General Common Elements shall not affect an Owner by way of modification of the Owner's voting power in the Association.

8.5 Conveyance or Encumbrance of General Common Elements.

8.5.1 Portions of the General Common Elements may be conveyed or subjected to a Security Interest by the Association only if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by a Declarant, agree to that action.

8.5.2 An agreement to convey General Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominiums is situated and is effective only upon recordation.

8.5.3 The Association, on behalf of all Owners, may contract to convey an interest in the Condominiums pursuant to subsection (a) of this section, but the contract is not enforceable against the Association until approved, executed and ratified. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

8.5.4 Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale or other transfer of General Common Elements is void.

8.5.5 A conveyance or encumbrance of General Common Elements pursuant to this section shall not deprive any Unit of its rights of ingress and egress to the Unit and support of the Unit.

8.5.6 A conveyance or encumbrance of General Common Elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

8.6 Acquiring and Disposing of Real and Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners tangible and intangible personal property and real property for such uses and purposes as the Board of Directors may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. 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 General Common

Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Unit. Transfer of a Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal and/or real property without any reference thereto. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Board of Directors in its sole discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

8.7 Payment of Taxes or Insurance by Security Interest Holders. Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the General Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the General Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

#### ARTICLE 9 CONVEYANCES, OWNERSHIP AND TAXATION OF UNITS

9.1 Contracts Entered 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/or this Declaration in the office of the Clerk and Recorder of the County of Mesa, Colorado, may legally describe such Unit in the manner set forth in Section 9.2 of this Article and may indicate that the Condominium Map and/or this Declaration are to be recorded. Upon recordation of the Condominium Map and this Declaration in the County of Mesa, Colorado, such description shall be conclusively presumed to describe the corresponding Unit shown on the Condominium Map and such Unit shall be subject in all respects to this Declaration.

9.2 Contracts Entered into Subsequent to Recording of Condominium Map and Declaration. Subsequent to the recording of the Condominium Map and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit may legally describe that Unit substantially as follows:

Unit \_\_\_\_, Town North Condominiums, according to the Condominium Map for Town North Condominiums, recorded on February 18, 2004, at Reception No. 2239682, in the records of the office of the Clerk and Recorder of the County of Mesa, Colorado, and as defined and described in the Declaration

of Covenants, Conditions and Restrictions of Town North Condominiums, recorded on February 18, 2004, at Reception No. 2239683 in said records.

9.3 Legal Effect of Description.

9.3.1 Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit which legally describes said Unit substantially in the manner set forth in Section 9.2 of this Article shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit, including the undivided interest in the General Common Elements appurtenant thereto and all other appurtenant properties and property rights, and to incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Unit and the use of all the General Common Elements, all as more fully, provided in this Declaration.

9.3.2 It shall not be necessary to use the term "unit" as a part of the legally sufficient description of a Unit.

9.4 Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act. For the purpose of such assessments, the valuation of the General Common Elements shall be apportioned among the Units in proportion to the undivided interest in the General Common Elements appurtenant to the Unit in question. The Association shall furnish to the Tax Assessor of the County of Mesa, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. 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.

9.5 Inseparability. Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

9.6 Non-Partitionability. The General Common Elements shall be owned in common by all of the Owners and shall remain undivided and not subject to partition, such that any

purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the General Common Elements made without the Unit to which that interest is allocated is void. By the acceptance of a deed or other instrument of conveyance or assignment, each Owner specifically waives the Owner's right to institute and/or maintain a partition action or any other action designed to cause a division of the General Common Elements. Furthermore, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs, expenses and all damages which the Association incurs in connection therewith.

ARTICLE 10  
USE OF CONDOMINIUMS FOR SALES PURPOSES

10.1 Maintenance of Sales Office and Model. Declarant reserves the right to maintain a sales office and/or model homes in Condominiums for sales purposes. Declarant shall maintain no more than one sales office and no more than two model Units at any time. Each sales office or home shall occupy no more than one Unit, and Declarant reserves the right to use any unsold Unit for such purposes.

ARTICLE 11  
MECHANIC'S LIENS

11.1 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, 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 General Common Elements except as to the undivided interest therein appurtenant to the space within the Unit of the Owner for whom such labor shall have been performed or such materials 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 against the Unit of any other Owner, the General Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit.

11.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 11.1 of this Article by collecting from the Owner of the Unit on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge

of such lien. In the event that the Owner of the Unit on which the labor was performed and/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, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 11.2 and such amount to be indemnified shall be and constitute an additional assessment for collection by the Association subject to all of the provisions of Article 5 hereof.

11.3 Effect of Part Payment. In the event a lien attributable to labor performed and/or materials furnished on the Condominiums, or any portion thereof, is effected against two or more Units, the Owner(s) of any of the affected Units may pay to the lienholder the amount of the lien attributable to such Owner's Unit and the lienholder shall release such Unit from the lien. The amount required to be paid by any such Owner in order to obtain release of the Owner's Unit from any such lien shall be equal to the quotient of (i) the amount of the lien divided by (ii) the total number of Units affected by the lien. Partial payment and release of any such lien with respect to any Unit(s) shall not prevent the lienholder from enforcing his or her rights against the Unit(s) for which payment has not been received.

## ARTICLE 12 SECURITY INTERESTS

12.1 Approval by Members and Security Interest Holders of First Security Interests. Notwithstanding any provisions of this Declaration to the contrary, the Association shall not:

12.1.1 except as provided by statute, in case of condemnation or substantial loss to the Units and/or General Common Elements, unless it has obtained the prior written approval of the Owners (other than the Declarant) casting at least sixty-seven percent (67%) of the votes in the Association or of those Security Interest Holders holding at least sixty-seven percent (67%) of the first security interests (based upon one vote for each first security interest owned):

- (a) by act or omission seek to abandon or terminate the Condominiums;
- (b) change the pro rata interest or obligations of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Unit in the General Common Elements;
- (c) partition or subdivide any Unit;

(d) seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the General Common Elements by the Condominiums is not a transfer within the meaning of this clause;

(e) use hazard insurance proceeds for losses to any condominium property (whether Units or General Common Elements) for other than the repair, replacement, or reconstruction of such condominium property.

AMENDED  
SEE PGS  
685-686

12.1.2 Unless it has obtained the consent of Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association, and of Security Interest Holders of first security interests who represent at least fifty-one percent (51%) of the votes of Units that are subject to such first security interests (and who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders of first security interests), add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which govern any of the following, provided that the implied approval of any Security Interest Holder of a first security interest shall be assumed if such Security Interest Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after such security interest holder receives proper notice of the proposal delivered by certified or registered mail with a "return receipt" requested:

(a) voting rights;

(b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;

(c) reductions in reserves for maintenance, repair, and replacement of General Common Elements;

(d) responsibility for maintenance and repairs;

(e) reallocation of interests in the General Common Elements or rights to their use;

(f) redefinition of any Unit boundaries;

- (g) convertibility of Units into General Common Elements or vice versa;
- (h) expansion or contraction of the Condominiums, or the addition, annexation or withdrawal of property to or from the Condominiums;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units;
- (k) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- (l) a decision by the Association to establish self-management if professional management had been required by a Security Interest Holder of a first security interest or any insurer or guarantor of a first security interest;
- (m) restoration or repair of the Condominiums (after a damage or partial condemnation) in a manner other than that specified in the Declaration, the Articles of Incorporation, or Bylaws of the Association; or
- (n) any provisions that expressly benefit Security Interest Holders, or insurers or guarantors of security interests.

12.2 Termination of Legal Status. Any action to terminate the legal status of the Condominiums after substantial destruction or condemnation occurs shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Security Interest Holders of first security interests who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of Security Interest Holders of first security interests and who represent at least fifty-one percent (51%) of the votes of the Units that are subject to such first security interests. Termination of the legal status of the Condominiums for reasons other than substantial destruction or condemnation of the Condominiums shall be permitted if agreed to by Security Interest Holders of first security interests who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of such Security Interest Holders of first security interests and who represent at least sixty-seven percent (67%) of the votes of the Units subject to first security interests.

12.3 Notice of Action. Upon written request to the Association, identifying the name and address of the Security Interest Holder of a first security interest or insurer or guarantor of the first security interest, and the residence address of the Unit which is subject to such first



security interest, each Security Interest Holder of a first security interest, or insurer or guarantor of a First Security Interest, shall be entitled to timely written notice of.

12.3.1 any condemnation loss or casualty loss which affects either a material portion of the Condominiums or any Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor of a First Security Interest;

12.3.2 any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor, when such delinquency remains uncured for a period of sixty (60) days;

12.3.3 any lapse, cancellation or material modification of any insurance policy maintained by the Association; and

12.3.4 any proposed action that requires the consent of a specified percentage of Security Interest Holders of First Security Interests as provided in this Article.

12.4 Audit. Any Security Interest Holder of a first security interest, insurer or guarantor of any First Security Interest, who submits a written request therefor, shall be entitled to have an audited financial statement of the Association books for the immediately preceding fiscal year prepared at the Security Interest Holder's expense if such audit is not otherwise available.

12.5 Confirmation of Rights of Security Interest Holders of First Security Interests. No provision of this Declaration, the Articles of Incorporation, or Bylaws of the Association give (or are intended to give) any Owner, or any other party, priority over any rights of the Security Interest Holder of a First Security Interest, pursuant to its First Security Interest, in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or General Common Elements.

### ARTICLE 13 GENERAL PROVISIONS AND MISCELLANEOUS

13.1 Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no

event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

13.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

AMENDED  
TERM TO  
5 YEARS  
SEE PG 80

13.3 Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by Declarant at any time prior to the recording of the first deed from Declarant to an Owner. ~~Thereafter, this Declaration may not be amended for any purpose whatsoever for a five (5) year period, and thereafter, this Declaration shall only be amended by vote or agreement of Owners of Units to which at least seventy percent (70%) of the votes in the Association are allocated. Any amendment must be recorded.~~

13.4 Limitation on Association. Any action, resolution or attempted action of the Association in conflict with any term or provision of this Declaration shall be void and of no force and effect whatsoever.

13.5 Notice. Notice of matters affecting the Condominiums may be given to Owners by mailing such notice by first class mail to the last address provided by the Owner to the Association. If no address has been provided by Owner, such notice shall be mailed to the address of Owner's Unit.

13.6 City of Grand Junction. In order to prevent the diminution in the enjoyment, use or property value of the Condominiums, thereby impairing the health, safety, and welfare of the Owners therein, the City of Grand Junction by and through its duly authorized officers and employees may take such action as the City of Grand Junction may deem necessary to enforce the covenants, conditions or restrictions contained in this Declaration with respect to the use of the Units, protection of the easements, and for the purpose of ensuring the Association's and the Owners' compliance with the zoning and other applicable ordinances of the City of Grand Junction. The Association shall not be dissolved without the consent of the City of Grand Junction. The provisions set forth in this section 13.6 shall constitute a permanent covenant which shall not be modified, amended or revoked without the written consent of the City of Grand Junction through a majority of the Grand Junction City Council.

IN WITNESS WHEREOF, Declarant sets his hand and seal the 23rd day of July, 2004.

**TOWN NORTH, LLC, a Colorado limited liability company**  
by its Manager:

By William D. Wagner  
William D. Wagner, Manager

60

### EXHIBIT A

A parcel of land situated in the NE 1/4 SE 1/4 NE 1/4 of Section 11, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado as recorded in Book 2205 at Pages 417 and 418, now being more particularly described as surveyed:

Commencing at the found city monument in the intersection of N. 11<sup>th</sup> Street and Bookcliff Avenue, the basis of bearing being S00°03'20"W to a found bare #4 rebar; thence S00°03'20"W a distance of 494.49 feet to said #4 rebar; thence S89°48'53"E a distance of 24.75 feet to the easterly right-of-way of N. 11<sup>th</sup> Street and the point of beginning; thence S89°58'54"E a distance of 435.36 feet; thence S00°00'44"E a distance of 139.98 feet to the northerly right-of-way of Walnut Avenue; thence N89°57'14"W a distance of 435.35 feet along said right-of-way to said easterly right-of-way of N. 11<sup>th</sup> Street; thence N00°00'59"W a distance of 139.77 feet to the point of beginning.

This description was written by:  
Michael W. Drissel PLS  
118 Ouray Ave.  
Grand Junction, CO. 81501

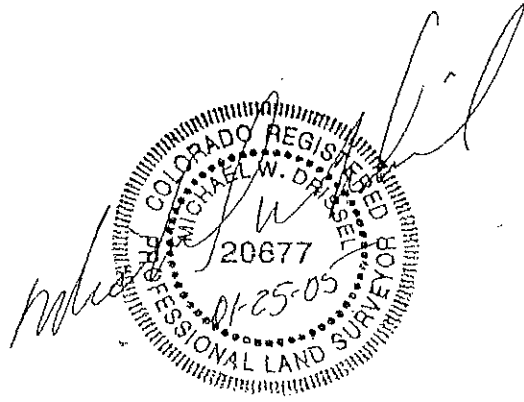
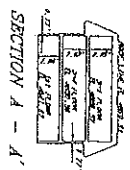
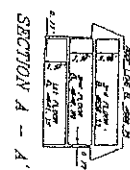
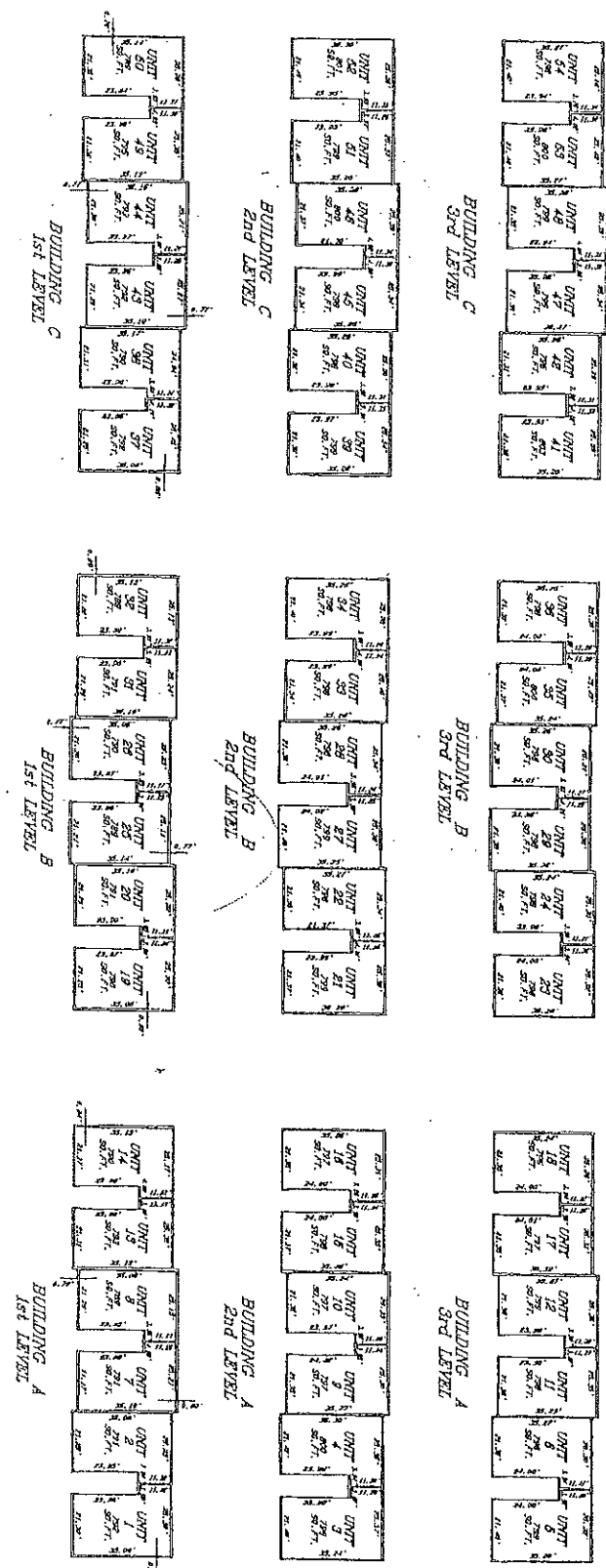
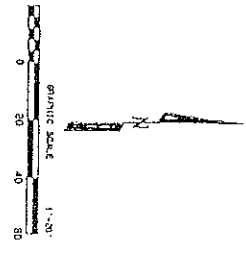


Exhibit B

# A CONDOMINIUM MAP OF TOWN NORTH CONDOMINIUMS



RECORDED NOTE: POOR QUALITY DOCUMENT  
PROVIDED FOR REPRODUCTION



CONDOMINIUM NOTES  
THIS MAP WAS PREPARED FROM THE  
PLANS AND RECORDS OF THE PROJECT.

**TOWN NORTH CONDOMINIUMS**  
 LOCATED IN THE  
 NE 1/4 SE 1/4 NE 1/4 SECTION 11, T3S, R1E, W4E  
**D. H. SURREY'S, INC.**  
 116 OURLAY AVE. GRAND JUNCTION, CO.  
 (970) 245-0740

DATE	BY	SCALE	NO.
1988	DHS	AS SHOWN	1

# CERTIFICATE OF COMPLETION

Town North Condominiums  
fka Town North Apartments  
1140 Walnut Ave.  
Grand Junction, CO. 81501

All structural components of all buildings containing or comprising any units thereby created are substantially completed.

A circular professional seal for Michael W. Drisse, a Colorado Registered Professional Land Surveyor. The seal contains the text "COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR" around the perimeter, "MICHAEL W. DRISSE" in the center, and "20877" below the name. A handwritten signature "Michael W. Drisse" is written over the seal, and the date "7-22-04" is handwritten below the seal.

Michael W. Drisse  
118 Ouray Ave.  
Grand Junction, CO. 81501

2252504 BK 3892 PG 508-509  
05/06/2005 04:09 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$10.00 SurChg \$1.00

FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
TOWN NORTH SUBDIVISION

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWN NORTH SUBDIVISION ("Amendment") is made and declared this 6<sup>th</sup> day of May, 2005, by TOWN NORTH, LLC, a Colorado limited liability company, hereinafter referred to as "Declarant."

RECITALS

- A. The Declaration of Covenants, Conditions and Restrictions for Town North Condominiums ("Declaration") was made and declared July 23, 2004, by Declarant.
- B. The Declaration was filed in the Mesa County real property records at Reception No. 2239683, Book 3839 at Page 353 on February 18, 2005.
- C. Declarant desires to amend the Declaration as set forth herein.

NOW, THEREFORE, Declarant hereby makes the following Amendment to the Declaration:

① Subparagraph 3.2.1 of Article 3 is amended in its entirety to read as follows:

"3.2.1 The nine (9) storage units are General Common Elements owned by the Association and shall be leased by the Association to Owners on such terms and conditions as determined by the Association, in its sole discretion."

② Subparagraph 3.3.3 of Article 3 is amended in its entirety to read as follows:

"3.3.3 The Association shall keep, maintain and repair the Buildings and Improvements, including but not limited to interior and exterior maintenance, and the General Common Elements in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration."





2262846 BK 3937 PG 78-81  
07/09/2005 04:00 PM  
Janice Ward CLK&REC Mesa County  
RecFee \$20.00 SurChg \$1.00

SECOND AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
TOWN NORTH SUBDIVISION

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TOWN NORTH SUBDIVISION ("Amendment")  
is made and declared this 6<sup>th</sup> day of July, 2005, by TOWN NORTH, LLC, a Colorado limited  
liability company, hereinafter referred to as "Declarant."

RECITALS

A. The Declaration of Covenants, Conditions and Restrictions for Town North  
Condominiums ("Declaration") was made and declared July 23, 2004, by Declarant.

B. The Declaration was filed in the Mesa County real property records at Reception  
No. 2239683, Book 3839 at Page 353 on February 18, 2005.

C. The Declaration was first amended on May 6, 2005. The First Amendment to  
Declaration of Covenants, Conditions and Restrictions for Town North Subdivision was filed in  
the Mesa County real property records at Reception No. 2252504, Book 3892 at Page 508 on  
May 6, 2005.

D. Declarant desires to amend the Declaration as set forth herein.

NOW, THEREFORE, Declarant hereby makes the following Amendment to the  
Declaration:

1. Subparagraph 3.1.1 of Article 3 is amended in its entirety to read as follows:

"3.1.1 All Units shall have entrance doors with a minimum twenty (20)  
minute rating."

2. Subparagraph 3.5.2 of Article 3 is amended in its entirety to read as follows:

"3.5.2 No animals of any kind shall be allowed until relinquishment of  
control of the Board by Declarant pursuant to subparagraph 4.3.3. No animals  
shall be allowed other than domestic pets. After the relinquishment of the Board  
by the Declarant and prior to the time that any animal is kept in a Unit, all pets  
shall first be approved by the Board. Notwithstanding Board approval, no Unit

shall have more than two (2) pets in cumulative total (including cats) and all pets shall be kept on the premises and only then if they are kept solely as household pets for private use and not for commercial purposes. No dog shall weigh in excess of twenty (20) pounds. No such animal may be kept which is a nuisance or annoyance to other Owners. Household pets shall be contained in their Owner's Unit or on a leash and not permitted to run loose. At the request of any Owner, the Board shall determine whether a particular animal shall be considered a household pet, a nuisance, a vicious breed or whether the number of any such animals in any Unit is in compliance. Habitually barking dogs and vicious breeds of any type of animal are prohibited, at the sole discretion of the Board. No horses, livestock, pigs, pot belly pigs, or ferrets of any type shall be kept in any Unit. Household pets shall be under the control of their owners at all times and their owners shall immediately clean all animal waste generated from the household pets."

3. Subparagraph 3.6.1 of Article 3 is amended in its entirety to read as follows:

"3.6.1 The parking lot shall be constructed so as to provide sufficient off street parking to accommodate one and one-half cars per Unit."

4. Paragraph 3.10 of Article 3 is amended in its entirety to read as follows:

"3.10 Signs. No poster, artwork, graphics, or sign of any kind shall be displayed to the public view on any Unit, including in any window of any Unit. Signs on the General Common Elements are governed by the Association."

5. Paragraph 4.2 of Article 4 is amended in its entirety to read as follows:

"4.2 Directors of the Association. The affairs of this Association shall be managed by a board of three (3) Directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 4.3.3, below, the Board shall be managed by at least three (3) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association. The Board shall have the power to establish such rules and regulations, including any penalties and the enforcement of penalties as it shall determine for the enforcement of the covenants, conditions and restrictions set forth in this Declaration. A violation of any rule or regulation established by the Board will constitute a violation of this Declaration and any person or Owner violating any such rule or regulation will be subject the remedies set forth in this Declaration as well as any remedies established by the Board under this Section 4.2."

6.

Paragraph 5.5 of Article 5 is amended in its entirety to read as follows:

"5.5 Reserve Fund. The Association shall establish a reserve fund for the maintenance, repair and replacement of the Condominiums, which shall be no less than One Thousand Dollars (\$1,000.00) per Unit for a total of Fifty-Four Thousand Dollars (\$54,000.00). The first payment shall be made equally by the Declarant and Buyer at the time of purchase of the Unit. The amount may be increased as determined by the Association and shall be funded through annual payments of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes. The Declarant shall not be responsible for funding any portion of the Reserve Fund beyond the matching contribution at the time of conveyance to the initial purchaser."

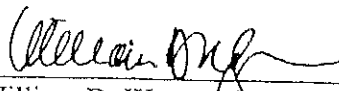
7.

Paragraph 13.3 of Article 13 is amended in its entirety to read as follows:

"13.3 Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of five (5) years from the date this Declaration was recorded, after which time they shall be automatically extended for successive periods of five (5) years. This Declaration may be amended by Declarant at any time prior to the recording of the first deed from Declarant to an Owner. Thereafter, this Declaration shall only be amended by vote or agreement of Owners of Units to which at least seventy percent (70%) of the votes in the Association are allocated. Any amendment must be recorded."

IN WITNESS WHEREOF, Declarant sets its hand and seal on the 26<sup>th</sup> day of July, 2005.

TOWN NORTH, LLC, a Colorado limited liability company,  
by its Manager

By   
William D. Wagner, Manager



2265469 BK 3948 PG 684-686  
07/22/2005 03:31 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$15.00 SurChg \$1.00

**THIRD AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
TOWN NORTH SUBDIVISION**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWN NORTH SUBDIVISION ("Amendment") is made and declared this 21 day of July, 2005, by TOWN NORTH, LLC, a Colorado limited liability company, hereinafter referred to as "Declarant."

**RECITALS**

A. The Declaration of Covenants, Conditions and Restrictions for Town North Condominiums ("Declaration") was made and declared July 23, 2004, by Declarant.

B. The Declaration was filed in the Mesa County real property records at Reception No. 2239683, Book 3839 at Page 353 on February 18, 2005.

C. The First Amendment to the Declaration was filed in the Mesa County real property records at Reception No. 2252504, Book 3892 at Page 508 on dated May 6, 2005, and the Second Amendment to the Declaration was filed in the Mesa County real property records at Reception No. 2262846, Book 3937 at Page 78 on dated July 8, 2005.

D. Declarant desires to amend the Declaration as set forth herein.

NOW, THEREFORE, Declarant hereby makes the following Amendment to the Declaration:

① Article 5 of the Declaration is amended with a new paragraph 5.11 to read in its entirety as follows:

"5.11 A First Security Interest Holder who obtains title to a Unit pursuant to the remedies in a mortgage, deed of trust, or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid Regular Assessments accrued before acquisition of the title to the Unit by the First Security Interest Holder."

② Paragraph 12.1.2 of the Declaration is amended to read in its entirety as follows:

“12.1.2 Unless it has obtained the consent of Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association, and of Security Interest Holders of first security interests who represent at least fifty-one percent (51%) of the votes of Units that are subject to such first security interests (and who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders of first security interests), add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which govern any of the following, provided that the implied approval of any Security Interest Holder of a first security interest shall be assumed if such Security Interest Holder fails to submit a response to any written proposal for an amendment within sixty (60) days after such security interest holder receives proper notice of the proposal delivered by certified or registered mail with a “return receipt” requested:

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;
- (c) reductions in reserves for maintenance, repair, and replacement of General Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the General Common Elements or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) convertibility of Units into General Common Elements or vice versa;
- (h) expansion or contraction of the Condominiums, or the addition, annexation or withdrawal of property to or from the Condominiums;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units;

