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**CONDOMINIUM DECLARATION
 FOR
 KOKOPELLI PROFESSIONAL CENTER CONDOMINIUM**

THIS CONDOMINIUM DECLARATION is made MARCH 13, 2006, by KOKOPELLI PROFESSIONAL CENTER, LLC, a Colorado limited liability company ("Declarant").

RECITALS

A. Declarant owns real property in the City of Fruita, Colorado in Mesa County, Colorado, legally described as:

Lot 2, Block 2, Kokopelli Commercial Park, Phase 3

B. Declarant wishes to establish a commercial condominium project on the Property under the Colorado Condominium Ownership Act and the Colorado Common Interest Ownership Act for the specific professional uses described in this Declaration.

C. By this Condominium Declaration, Declarant establishes a plan for the ownership in fee simple of the real property estates (subject to the easements, restrictions, reservations, conditions, taxes, assessments, terms, conditions, covenants and other terms and conditions contained in this Declaration) consisting of the individual airspace or area contained in each of the airspace units within the Building located on the above property, plus the individual unit owners' undivided co-ownership, as tenants in common, of all of the remainder of the Property, as more fully described in the terms of this Declaration.

D. Declarant has caused a unit owners association to be incorporated under the name Kokopelli Professional Center Owners Association, a Colorado nonprofit corporation.

THEREFORE, Declarant declares that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations, rights, and obligations shall be deemed to run with the land, shall be a burden and a benefit to the Declarant and its successors and assigns, and also a burden and benefit to any person or entity acquiring or owning an interest in the real property or improvements which are the subject of this Condominium Declaration, together with each and all of their grantees, heirs, devisees, personal representatives, administrators, successors and assigns.

**ARTICLE 1
DEFINITIONS**

Section 1.01. The "Act" means the Colorado Condominium Ownership Act, presently codified at C.R.S. §38-30-101, *et seq.*, as it may be amended, supplemented, repealed and reenacted and otherwise modified in the future.

Section 1.02. "Articles of Incorporation" means the articles of incorporation of the Association as they may be amended from time to time.

Section 1.03. "Assessment" shall mean and refer to any assessment levied against one or more Owner(s) or Unit(s) as permitted by this Declaration or applicable law, including without limitation any of the following:

(a) "Regular Assessment" shall mean and refer to a charge against each Unit representing that portion of the Common Expenses attributable to that Unit, including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.

(b) "Special Assessment" shall mean and refer to a charge against any Unit for costs incurred by the Association for materials or services furnished to the Owner or his or her Unit at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain his or her Unit in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his or her employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a special assessment.

(c) "Capital Assessment" shall mean and refer to a charge against any Unit representing a portion of the Association's cost for the purchase, installation, construction, re-construction, expected or unexpected repair or replacement, of any capital improvement (including the necessary fixtures and personal property related to it) that is a Common Expense of the Association, plus reserves for repair, replacement or reconstruction of existing capital items, and the acquisition, construction and installation of new capital improvements. A Capital Assessment may also be a Special Assessment.

Section 1.04. "Association" means the association of the Owners of Units in the Condominium Project formed as a Colorado nonprofit corporation under the name "Kokopelli Professional Center Owners Association."

Section 1.05. "Association Documents" means the Articles of Incorporation, Bylaws and Rules and Regulations of the Association as each of them may be modified from time to time in accordance with this Declaration or applicable law.

Section 1.06. "Board" or "Board of Managers" means the board of managers of the Association.

Section 1.07. "Building(s)" means one or more of the structures on the Property containing the Units as shown on the Map.

Section 1.08. "Bylaws" means the Bylaws of the Association as they may be modified from time to time in accordance with this Declaration or applicable law.

Section 1.09. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at Section 38-33.3-101, C.R.S., *et seq.*, as it may subsequently be amended, supplemented, repealed and reenacted and otherwise modified in the future from time to time.

Section 1.10. "City" means the City of Fruita, Colorado.

Section 1.11. "Common Elements" (which includes both General Common Elements and Limited Common Elements) means and includes all of the Property, together with all of the improvements now and subsequently located on the Property, and together with all fixtures, appurtenances, and facilities provided for the common use, utility, or benefit of Owners or Units, or necessary or convenient to the Property or its existence, use, maintenance, or safety; EXCEPT, the Common Elements shall not include any of the Units.

Section 1.12. "Common Expenses" means and includes all expenditures made, and liabilities incurred, by or on behalf of the Association, together with any allocations to reserves.

Section 1.13. "Condominium Project" means Kokopelli Professional Center Condominium and includes all real property (including both Units and Common Elements) initially submitted to this Declaration and any additional property subsequently submitted to the Declaration in accordance with its provisions or applicable law.

Section 1.14. "Declarant" means Kokopelli Professional Center, LLC, a Colorado limited liability company and its successor(s) or assign(s) designated in writing by Declarant to be the successor of Declarant, subject to any limitation on such transfer contained in this Declaration, CCIOA or other applicable law.

Section 1.15. "Declaration" means this Condominium Declaration and any supplements and amendments to it.

Section 1.16. "Manager" means a member of the Board of Managers.

Section 1.17. "General Common Elements" means all of the Common Elements, except any Limited Common Elements.

Section 1.18. "Insured Items" has the meaning stated in subsection 4.05(a).

Section 1.19. "Limited Common Elements" means those parts (if any) of the Common Elements which are limited to or reserved for the exclusive use of one or more, but fewer than all, Owners or Units. Limited Common Elements shall include, but not be limited to, (i) any areas which are specifically designed as being appurtenant to fewer than all of the Units and so designated on the Condominium Map or in this Declaration, (ii) any limited common elements as defined by CCIOA, (iii) the sign on the exterior of a Building outside a Unit identifying the business carried on in a Unit (see Section 3.05), (iv) exterior windows, doors and glass of any Unit, and (v) the exterior lights and light fixtures and any entryways of Units. If a single Unit occupies an entire Building, then the Limited Common Elements shall include, by way of example and not limitation, all of the Building in which the Unit is located, plus all utility lines, fixtures and facilities serving only that Unit.

Section 1.20. "Map" or "Condominium Map" means the map of the Condominium Project attached to this Declaration and incorporated by this reference. The Map may be amended from time to time in accordance with this Declaration or applicable law and any such amendments shall be part of this Declaration. Any amended Map that creates one or more new Units or changes any boundary of any Unit must show the square footage of all Units and must be approved by the City.

Section 1.21. "Member" shall mean and refer to every person or entity holding a membership in the Association.

Section 1.22. "Officer" means an officer of the Association.

Section 1.23. "Owner" means one or more persons, firms, corporations, partnerships, or other legal entities, or any combination of them, which own(s) an interest in one or more Units.

Section 1.24. "Property" means the real property in Mesa County, Colorado, described in Recital Paragraph A of this Declaration.

Section 1.25. "Rules and Regulations" means any written terms and conditions, however denominated, that are adopted by the Association for the management, regulation, use, operation or any other aspect of all or any part of the Condominium Project, including any amendments. See Section 6.05.

Section 1.26. "Unit" means the interest in real property consisting of the individual airspace, interior partitions, fixtures and improvements that are located in a Building and contained within the windows, doors, stud walls, floors and bottom surface of the roof trusses defining each area so designated and shown on the Map, including without limitation (i) the finished ceiling, whether attached directly to the bottom surface of the roof trusses or consisting of tiles and grids of any drop ceiling, (ii) drywall, wallboard, and all paneling, tiles, wallpaper, paint, or other covering or finishing on the inside (the side facing the Unit) of the stud walls adjacent to that Unit, (iii) all floor coverings on the unfinished floor; (iv) any other materials constituting the finished surfaces, together with (v) the Unit Owner's undivided interest in the Common Elements appurtenant to that Unit, and (vi) all other rights and obligations appurtenant or related to that Unit under this Declaration or applicable law.

ARTICLE 2

CONDOMINIUM OWNERSHIP

Section 2.01. Submission to Condominium Ownership. Declarant submits all of the Property, together with all of its appurtenances and all improvements now and subsequently located on the Property, to condominium ownership pursuant to the Act and CCIOA.

Section 2.02. Division of Property into Units.

(a) The common interest community created by this Declaration is a condominium.

(b) The description of the boundaries of each Unit initially created by this Declaration is shown on the Map. Each Unit includes an undivided fractional interest in and to the Common Elements. The interest in the Common Elements associated with a Unit shall be appurtenant to and inseparable from each such Unit. That interest shall automatically change without notice, action or documentation upon a change in the number of Units under Section 2.03 or Section 10.02, so that the fractional interest in the Common Elements appurtenant to a Unit shall always be that fraction in which the numerator is the number of square feet contained in a Unit and the denominator is the total number of square feet in all Units then in the Condominium Project, utilizing the square footage of the Units shown on the Map rounded to the nearest square foot.

Section 2.03. Changing Unit Boundaries. Units may be subdivided or combined with one or more adjoining Units, or both combined with one or more adjoining Units and then resubdivided, subject to the terms and conditions stated in this Section 2.03 and in compliance with all then applicable laws.

(a) Subject to the terms and conditions stated in this Section 2.03: (i) the Owner(s) of multiple Units in this Condominium Project shall have the right to physically combine all of the area or space of one Unit with all of the area or space of one or more adjoining Units in the same Building; (ii) subdivide a Unit; or (iii) both combine and re-subdivide adjoining Units in the same Building.

(b) Any Unit boundaries may be changed only: (i) by Declarant under Article 10; or (ii) as stated in CCIOA at C.R.S. §§ 38-33.3-211 through 213, or as now or later permitted by then applicable law. No Unit boundary shall be changed without complying with all ordinances, regulations, and requirements of the City, including without limitation (if applicable) subdivision application process, planning clearance approval, and issuance of a building permit. No Unit, regardless of when or how created, shall contain fewer than 1,000 square feet.

(c) In the event of any physical combining of Units, the new combined Unit shall become a single legal parcel and shall also include (i) the undivided interests in Common Elements appurtenant to the combined Units as specified in subsection 2.02(b) and, (ii) as additional Limited Common Elements appurtenant to the combined Unit, walls or other structural separations between Units combined (or any space which would be occupied by such structural separations but for the combination of such Units). The Owner(s) of the Units combined may remove or alter any intervening partitions or create apertures in them, subject to the following provisions:

(i) no construction, removal, alteration, or creation of any opening in any partition wall between Units, nor any other act or omission under this Section 2.03, shall impair the structural integrity (or the electrical, mechanical, HVAC or other utility systems), lessen the support of, or otherwise adversely impact any of the Buildings; and

(ii) any pipes, wires, conduits, chases, or systems running through such partition walls shall not be disturbed or relocated without the prior written consent of the Association, which shall not be unreasonably withheld, conditioned or delayed.

(d) All partitions (unless the Association agrees otherwise in writing in its sole and absolute discretion) and other Common Elements removed or altered upon combination of Units shall be replaced by and at the expense of the Owner(s) of Units combined (and shall automatically become Common Elements), if the combined Units come under separate ownership at any later time for any reason. By way of example and not limitation, in the subdivision of any Unit or resubdivision of combined Units, a demising wall shall be constructed between newly created Units which shall automatically become part of the Common Elements upon completion of construction and the following provisions shall apply.

(i) The Owner of a Unit being combined, subdivided or both shall provide to the Association at least 30 days prior to commencement of construction detailed construction (and if appropriate engineering) plans for all work to be done and all other materials reasonably required for the Association to assess the proposed work. The Association may require that the affected Unit Owners incorporate into the design, engineering, construction and finish of the proposed work any design, materials, facilities, utilities or other structural, electrical, mechanical, cosmetic or other elements and/or design, engineering, construction or finish applications, techniques or materials, or that the Owners take or refrain from taking any other action, reasonably required by the Association for the benefit of the Association, some or all of the Owners, or some or all of the Units, the any of the Buildings, the Condominium Project or the Property. All of that construction and other work shall be at the expense of, and the personal obligation of, the Owner(s) undertaking the construction. Actions under this subsection 2.03(d)(i) shall be subject to the procedures specified in Section 6.06.

(ii) Any Limited Common Element of the Unit before subdivision upon subdivision shall become a Limited Common Element of the new Unit(s) served or benefitted by that

Limited Common Element.

(e) All labor and materials used in any alteration of any of the Buildings under this Section 2.03 shall be of at least comparable quality to that utilized in the initial construction of the Building and shall comply with all laws, ordinances, regulations and codes in effect at the time of the work. The Association shall be entitled to have an architect, engineer, construction manager or other qualified professional review and approve plans for the work, and the work itself, which approval shall not be unreasonably withheld; and the cost of these services shall be personal the obligation of the Owner(s) of the affected Unit(s) and may be charged as part of any Assessment against the Unit(s) concerning which the work is done.

(f) The Owner(s) of the Unit(s) affected by any combination or subdivision (or both) under this Section 2.03 will be personally responsible, at their expense, for all labor, materials, and other costs and expenses of construction under and compliance with this Section 2.03, for preparing and recording all documents necessary to make these changes, and for obtaining all required approvals, as well as for any related costs and expenses of the Association, all of which may be assessed equally against the Units affected if not paid when due or declared due by the Association. In making those changes, the Owner(s) of the Unit(s) in question will not do anything to affect the title or marketability of the other Units and will indemnify all other Owners and the Association from all damages, expenses and liability of any nature incurred by or asserted against any of them arising from or related to such changes, including without limitation reasonable attorney fees and costs and expenses of litigation.

(g) Upon any combining or subdividing of any Unit(s) the votes and voting in the Association of those Units shall be in accordance with Section 5.02.

(h) No construction or other action under this Section 2.03 shall unreasonably increase Common Expenses.

(i) Any combining or subdividing of Units shall comply with all applicable laws, ordinances and regulations, including without limitation City land use and building code regulations and all applicable provisions of the Act and CCIOA.

(j) Any subdividing of Units otherwise in compliance with this Section 2.03 may include the modification of the exterior walls and facade of the Building in which such subdivision occurs to allow separate entrances for any newly created Units and for the installation of separate HVAC systems on the roof of that Building and for the installation of other systems related to the newly created Units, all subject to all terms and conditions of this Section 2.03 and the remainder of this Declaration.

(k) Without subdividing or combining existing Units, the Owners of adjacent Units may install one or more doors or openings in the demising wall between their Units at the expense of such Owners upon (i) complying with all ordinances, codes, regulations, and requirements of the City, including without limitation (if applicable) subdivision application process, planning clearance approval, and issuance of a building permit, (ii) obtaining the prior written approval of the Association, which shall not be withheld unreasonably, and (iii) complying with the following provisions of this Section 2.03: paragraphs (i) and (ii) of subsection (c); subsection (d), including paragraph (i), except that any removed or breached demising wall between the Units involved must be replaced in accordance with this Section either (A) upon the expiration of any agreement between the neighboring Unit Owners concerning creation of the door(s) or opening(s) or

(B) if required by the City or any of the Association's insurers; all requirements and terms of subsections (e), (f) and (h).

Section 2.04. Newly Created Units. Unless otherwise provided by applicable law or ordinance, any modification of the number of Units and any related change in the Common Elements as permitted by Section 2.03 may be accomplished by the filing for record in the Mesa County, Colorado, real estate records one or more Supplemental Declarations and supplemental Maps setting forth the Units and/or Common Elements to be included in the expansion, and a statement that this Declaration shall govern and apply to that property. Any amended Map that creates one or more new Units or changes any boundary of any Unit must be approved by the City.

(a) In the event of such modification, the definitions used in this Declaration shall be automatically extended to encompass and refer to any newly created Units and Common Elements subject to this Declaration. The recording of supplemental Map(s) in the real estate records of Mesa County, Colorado, incident to any modification shall operate automatically to grant, transfer, and convey to the Association any new Common Elements added to the Property as the result of such modification. Subsequent to any change in the number of Units pursuant to Section 2.03, any conveyance of Units within the Condominium Project, as modified, shall transfer an undivided interest in the Common Elements, including without limitation any Common Elements newly created by the modification.

(b) Any newly created Units shall be subject to all of the terms and conditions of this Declaration upon recording the Supplemental Declaration creating such Unit(s) and supplemental or amended Map(s) depicting the newly created Units in the Mesa County, Colorado, real estate records.

Section 2.05. Description of Unit.

(a) Any contract, deed, lease, mortgage, trust deed, will, or other instrument may legally describe a Unit by the word "Unit" (or "Units" if more than one) followed by the identifying number(s) shown on the Map, followed by the words "Kokopelli Professional Center Condominium."

(b) Every such description: shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Unit, together with the undivided interest in the Common Elements appurtenant to that Unit and any other appurtenant property rights; and shall incorporate all of the rights and burdens incident to ownership of a Unit and all of the limitations on such ownership as described in this Declaration and the Condominium Map, including without limitation the associated liability for Common Expenses and vote(s) in the Association. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from the Unit to the public sidewalks and streets adjoining the Condominium Project, and the use of any Limited Common Elements appurtenant to that Unit, and the use of all the General Common Elements, all subject to the terms and conditions of this Declaration.

(c) Reference to the Map or this Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration, without specific reference to such amendment or supplement.

Section 2.06. Condominium Map. The initial Map shall be recorded in the Mesa County, Colorado, real estate records prior to the conveyance of any of the Units shown on it and shall comply with

all requirements of applicable law, including without limitation C.R.S. §38-33.3-209.

Section 2.07. Inseparability of a Unit. Each Unit, the appurtenant undivided interest in the General Common Elements, and any appurtenant Limited Common Elements, as well as all other appurtenances, rights, and burdens, shall together comprise one Unit and shall be inseparable, except as may be otherwise expressly stated in this Declaration. Each Unit may be conveyed, leased, devised, or encumbered only as a Unit. Each Unit includes the associated Common Elements and liability for Common Expenses.

Section 2.08. Separate Assessment and Taxation — Notice to Assessor. Declarant shall give written notice to the Assessor of Mesa County, Colorado, of the creation of the condominium ownership in the Property by the Condominium Project as is provided by law, so that each Unit and the undivided interest in the Common Elements appurtenant to it shall be deemed a separate parcel for purposes of assessment and taxation.

Section 2.09. Form of Ownership — Title. A Unit may be held and owned in any real property capacity or tenancy relationship recognized under the laws of the State of Colorado.

Section 2.10. Non-Partitionability and Transfer of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain undivided. Each Owner specifically waives the right to institute or maintain a partition action or any other action or proceeding designed to cause a division of the Common Elements; and each Owner specifically agrees not to institute any such action, except as may be necessary to enforce the terms and conditions of this Declaration. A violation of this provision shall entitle the Association to collect (jointly and severally from the parties violating the same and as part of any Assessment against the Owner(s)' Unit(s)) the Association's reasonable attorney fees, costs, and all other costs, expenses and damages to the Association incurred in connection with such enforcement, in addition to any other relief to which the Association may be entitled.

ARTICLE 3 USE AND OCCUPANCY

Section 3.01. Use of General and Limited Common Elements. Except as otherwise provided in this Declaration, each Owner shall be entitled to exclusive ownership and possession of his or her Unit(s), and each Owner may use the General Common Elements, as well as any Limited Common Elements and other appurtenances of his or her Unit(s), in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners or the Association. The Association may adopt Rules and Regulations for the regulation, management, use and operation of the Condominium Project, for example governing the use of General Common Elements and Limited Common Elements, as more fully described in Section 6.05.

Section 3.02. Nuisances. No nuisance shall be permitted on, around or within any of the Buildings or on the Property, nor any use, activity or practice which is the source of annoyance to or which disturbs any Owners, or which interferes with the peaceful enjoyment or possession and proper use of, the Property or any portion thereof, by its Owners and their invitees and licensees. As used in this Section 3.02, the term "nuisance" shall not include (i) activities of Declarant or its designees that are reasonably necessary to the development of the Condominium Project in accordance with the Declaration or applicable law; provided however, that such activities of Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his or her Unit or the General Common Elements or Limited Common Elements, or

(ii) lawful actions which are legal and a reasonably necessary part of a permitted use.

Section 3.03. Only Certain Professional Uses Permitted. Subject to the provisions of subsections (b) and (c), the Condominium Project shall be used and occupied only for professional purposes and related retail purposes, except that mortgage brokerages and title companies are also permitted.

(a) For purposes of this Section 3.03, "professional purposes" shall mean those learned professions requiring a high degree of training and education including, by way of example and not limitation, accounting, architecture, dentistry, financial services, law, medicine, physical therapy and psychology. Subject to subsection (b), retail uses unrelated to one or more professional purposes shall not be permitted. The Board of Managers shall determine, in its sole and absolute discretion, whether a proposed use not specifically listed in this subsection (a) is permitted within the definition of professional purposes under this Section 3.03.

(b) Any Unit may be used for other than for professional purposes or a related retail use or a mortgage brokerage or a title company only upon the consent of a majority of the then record Owners, with such majority being measured in square footage of Unit space owned as a percentage of the total square footage of all Units in the Condominium Project as shown on the Map. Such consent shall be evidenced by a written document recorded in the real estate records of the office of the Clerk and Recorded of Mesa County, Colorado, signed and acknowledged either by (i) the chairperson of the Board of Managers or an officer of the Association stating that consent as required by this subsection (b) has been given in writing by the required majority of the Owners, or (ii) a majority of the Owners as determined above (which may be in any number of counterparts).

(c) Under any circumstances, the Condominium Project shall be used only for those uses permitted by applicable laws, ordinances and regulations, including without limitation the City Land Use Code.

Section 3.04. Hazardous Activities. No activities shall be conducted on the Property or within any of the Buildings which are or might be unreasonably hazardous to any person or property.

(a) Except as expressly permitted by this Section 3.04, no Owner shall use or permit his or her Unit(s) to be used for the manufacture, storage, use, or disposal of any substance ("Hazardous Material") classified or categorized as a hazardous material or substance by any applicable federal, state or local environmental safety law, regulation, order or ordinance (together "Environmental Regulations"), nor will any Owner do or permit any act or omission anywhere in any Building or on the Property that is in violation of any Environmental Regulations.

(b) No Owner shall (i) conduct or permit any activity in a Unit, a Building or on the Property that would cause any Unit, any Building, or the Property to become a hazardous waste manufacture, treatment, storage or disposal facility within the meaning of any Environmental Regulations or (ii) cause or permit any release or threat of release of Hazardous Material in or in the vicinity of a Unit or any Building or the Condominium Project. An Owner or occupant of a Unit may use or store in a Unit only Hazardous Material that normally forms an integral part of the business operated in the Unit, which shall be used, stored and disposed of (but not disposed of in a Unit, any Building or on the Property) only in strict compliance with all applicable Environmental Regulations.

(c) No Owner shall do or permit any act or omission in or about his or her Unit associated with Hazardous Material or Environmental Regulations that would cause cancellation of insurance on the Unit, any Building or the Property. Any related increase in insurance may be included in any Assessment against the affected Unit(s) and shall be the personal obligation of the Owner(s) of the affected Unit(s).

(d) Each Owner shall indemnify and hold the Association and other Owners harmless from and against all costs, expenses, losses, liabilities and damages of any nature (including without limitation response and remediation costs, attorney fees, consultant and expert fees) in any way arising from or related to the use or storage in a Unit of Hazardous Material and its disposal, plus from and against any violation of the Owner's obligations under this Section 3.04.

(e) The provisions of this Section 3.04 are the personal obligations of each Owner and shall survive any transfer or conveyance of a Unit by its Owner(s), whether voluntary or involuntary. An Owner shall immediately provide to the Association a copy of any notice or order relative to the Owner's Unit(s) or its occupation in any way relating to any Environmental Regulations.

Section 3.05. Sign Limitations. There shall be permitted no more than one exterior sign identifying the business carried on in a Unit. The Association may regulate all aspects of such signs by Rules and Regulations under Section 6.05; provided that any such signs shall also be subject to restrictions imposed by any applicable laws, ordinances and regulations, including without limitation any City sign code then in effect, such as that included in the City Land Use Code at the time of the recording of this Declaration.

Section 3.06. HVAC Systems. The Owner of each Unit shall be entitled to install, operate, maintain repair and replace equipment for the HVAC system for that Unit on the roof of the Building in which that Unit is located, subject to all reasonable conditions, restrictions and limitations concerning the same that may be imposed by the Association. All costs, expenses, damages, obligations and liabilities of every nature (including without limitation those incurred by or asserted against the Association) arising from or in any way related to that equipment shall be the personal obligation of the Owner of that Unit and may be assessed against the Unit as part of any Assessment.

ARTICLE 4

CONSTRUCTION AND OPERATION MATTERS

Section 4.01. Easements—Encroachments and Common Elements Facilities.

(a) If any portion of the Common Elements encroaches upon any Unit or Units, or if any portion of one Unit encroaches upon any other Unit(s) or upon any portion of the Common Elements, or if any encroachment shall occur as a result of: (i) settling or shifting of a Building; or (ii) alteration or repair to the Common Elements (including without limitation under Section 2.03 or Section 10.02); or (iii) repair or restoration of a Building or a Unit after damage by fire or other casualty; or (iv) condemnation or eminent domain proceedings, then a valid easement shall exist for the encroachment and for the maintenance of the same, so long as that Building stands. If any one or more of the Units (or any Building or other improvements comprising part of the Common Elements) is partially or totally destroyed and is then rebuilt or reconstructed in substantially the same location, and, as a result of such rebuilding, any portion shall encroach as provided in the preceding sentence, a valid easement for such encroachment and for its maintenance and repair shall and does exist, so long as it stands. Such encroachments and easements shall

not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration and subsequent Unit deeds to and encumbrances or liens upon Units, the actual location of the Unit shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered notwithstanding any minor deviations (horizontally, vertically, or laterally) from the locations as indicated on the Map. The easements created by this provision do not relieve a Unit Owner of liability in case of willful misconduct or relieve Declarant or any other person or entity of liability for failure to adhere to the Map.

(b) The Association shall have an easement through and across the area of each Unit extending from the top boundary of the Unit (the bottom surface of the roof trusses to an elevation 11.0 feet above the bottom boundary of each Unit (the unfinished floor surface) for Common Elements and related facilities, including without limitation pipes, valves and wiring related to fire suppression and warning facilities and improvements. In addition, if reasonably required or required by applicable law, code, regulation or order this easement may extend further into the Unit, so long as exercise and utilization of this easement does not unreasonably restrict or interfere with use and enjoyment of a Unit. For example, required fire sprinkler system heads may extend into a Unit below the 11.0 foot elevation level described above.

Section 4.02. Termination of Mechanic's Lien Rights and Indemnification. Subsequent to the initial construction of the Buildings and other Common Elements constituting the Condominium Project, no labor performed or materials furnished and incorporated in a Unit shall be the basis for filing a lien against: (a) any other Unit except as otherwise provided by law; or (b) against any of the Common Elements except for the undivided interest in the Common Elements appurtenant to the Unit against which a lien is rightfully filed. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services, or other products incorporated in the Owner's Unit at such Owner's request. Despite the foregoing, any mortgagee or other lienor of a Unit who shall become the Owner of such Unit pursuant to a lawful foreclosure sale or deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any other Owner against liability for claims arising prior to the date such lienor becomes an Owner. The lien rights of the Association are excluded from the provisions of this Section 4.02.

Section 4.03. Access — Maintenance, Repair, and Emergencies.

(a) The Association shall have the irrevocable right to have access to each Unit from time to time as may be reasonably necessary for the inspection, operation, maintenance, repair, and replacement of any of the Common Elements in such Unit or accessible from it, for the protection of the structural integrity of the Building, for the maintenance, repair, inspection and protection of the Common Elements, in order to minimize or prevent damage to the Common Elements or any Unit, and for every other reason reasonably related to the rights or obligations of the Association, all of which rights of access may be exercised (i) without prior notice during regular business hours (provided such access shall not unreasonably interfere with operation of the business in that Unit), and (ii) upon reasonable prior notice outside of regular business hours, and (iii) as to any Unit without prior notice at any hour in an emergency.

(b) Each Owner and its employees and agents shall have access rights comparable to those granted to the Association in subsection (a) above with respect to that Owner's Unit(s), except that access in every case shall require reasonable prior notice to, and the right of, the Owner of the Unit affected or that Owner's representative and the Association's representative to be present in all cases, in addition to

which no Owner may exercise rights under this subsection (b) unless and until the Association shall have failed to act under subsection (a) for at least 72 hours after written request from the Owner.

(c) The Owners of the Units shall have a perpetual nonexclusive easement in common with all other Unit Owners in this Condominium Project on, over, and across the General Common Elements for purposes of ingress and egress to and from their Units from the public streets and sidewalks which adjoin the Condominium Project, plus an easement for the use of any other General Common Elements for all uses reasonably related to the use or enjoyment of that Owner's Unit(s); subject, however, to the provisions of this Declaration and the Association Documents.

(d) If damage is inflicted, or there is a strong likelihood that it will be inflicted, on any Unit or Common Elements through exercise of the rights granted in subsection (a), (b), or (c) above, the Owner responsible (or the Association, if it is responsible) for the damage, or the expense to avoid damage, shall be liable for the cost of prompt repair or to prevent damage, which in the case of a responsible Owner also may be the subject of any Assessment against that Owner's Unit(s) as provided in this Declaration.

Section 4.04. Upkeep of the Condominium Project.

(a) Except as otherwise expressly stated in this Declaration, an Owner is responsible for all maintenance and repair of his or her Unit(s), including without limitation maintenance, repair and replacement as necessary to keep such Unit(s) clean and in good, clean and sanitary condition and repair at all times, and to avoid damaging any Common Elements, other Units, or other Owners and to comply with all applicable laws, ordinances and regulations. Without the prior written approval by the Association which the Association may deny, delay or condition in its sole and absolute discretion, an Owner shall not change, modify, paint, decorate, alter or in any way make any change to any exterior window or glass, exterior or Unit boundary wall, exterior Unit door or other portion of the Condominium Project, except for fixtures within his or her Unit(s) and the interior floors and walls and ceiling. Despite anything to the contrary stated in this subsection (a), an Owner may install locks of the Owner's choice on the exterior doors of the Owner's Unit(s), so long as the Common Elements are not damaged and the Association is provided with a key, combination or other means of opening such lock to provide the Association with access to the Unit for the purposes specified in this Declaration.

(b) The Association shall have the duty and sole right to maintain, repair, and replace as needed all of the Common Elements within the Condominium Project. Except as stated in subsection (c), (d) and (e) below, the cost of maintenance, repair, and replacement of Common Elements (together with all damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the direction of the Association) shall be a Common Expense of all of the Owners.

(c) If any damages or loss to the Common Elements, or any other Common Expense, is caused or required either (i) because of an Owner failing to fulfill that Owner's obligations under subsection (a) above or (ii) by act or omission which is both (A) negligent, intentional, or tortious and (B) by an Owner, its agent, independent contractor, employee, invitee, licensee, tenant, or any other person or entity on or about the Condominium Project with the express or implied permission of that Owner, then that damage, loss or expense shall be the personal responsibility of that Owner, which the Association may assess as part of any Assessment against that Owner's Unit(s). Liability and assessment under this provision shall be determined by the Board at a hearing after notice to the Owner, provided that any such determination

which assigns liability to an Owner pursuant to the terms of this Section 4.04 may be appealed by that Owner to the courts of Mesa County, Colorado, subject to the statutes and court rules applicable to those courts.

(d) All costs of operation, maintenance, repair, or replacement of (or otherwise associated with) any Limited Common Elements shall be paid equally by, and assessed to, the Owner(s) of the Unit(s) to which such Limited Common Elements are appurtenant, subject to the same terms and conditions of Owner responsibility stated concerning the General Common Elements in subsection (c) above.

(e) Any Common Expenses or portion of such expenses benefitting fewer than all of the Owners or Units shall be assessed exclusively against the Owner(s) and Unit(s) benefitted, subject to subsection (c).

Section 4.05. Damage, Destruction or Obsolescence of a Building.

(a) This Declaration constitutes each Owner's appointment of the Association as his or her attorney-in-fact to administer repairs, receive and apply insurance funds, reconstruct any part or aspect of the Condominium Project and to ensure compliance with this Declaration upon, damage to or destruction or obsolescence of, the Common Elements or the insured loss of any items within any Unit that are covered by the Association's master insurance policy (together "Insured Items"). Any grantee's acceptance of a Deed or other evidence of an ownership interest to any Unit shall constitute the irrevocable appointment of the Association as attorney-in-fact as provided in this Section 4.05.

(b) As attorney-in-fact, the Association, by its president and secretary, shall have the full and complete authority, right and power to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers granted in this Declaration. Repair and reconstruction of damaged or destroyed Common Elements and Insured Items means restoring them to substantially the same or better condition as they existed prior to any damage or destruction or obsolescence. Except as otherwise provided in this Declaration, any insurance proceeds collected shall be paid to the Association for the purpose of repair, restoration, or replacement.

(c) As attorney-in-fact, the Association, acting through a vote of its Members as provided in its Articles and Bylaws, shall be the sole determiner of whether any Common Elements or Insured Items have become obsolete (if such obsolescence of an Insured Item is an insured loss). Upon such determination, the Association, as attorney-in-fact, shall have the full power and authority to repair or replace such obsolete Common Elements or Insured Items and render them compatible with standards applicable to the time of determination.

(d) Any expenses incurred under this Section 4.05 shall be Common Expenses, subject to the provisions of subsection 4.04(c).

Section 4.06. Garbage and Refuse Disposal. No garbage, refuse, rubbish, trash or the like shall be deposited anywhere on the Property except in a container maintained by the Association solely for the purpose of garbage pickup. Waste disposal shall be one of the Common Expenses; provided, the Association may assess a Unit as part of any Assessment for waste disposed of from or related to that Unit which the Association, in its sole discretion, determines to be excessive. Rules and Regulations may contain additional provisions concerning garbage issues.

Section 4.07. Leases. The term "lease" as used in this Declaration shall include any agreement for the leasing or rental of a Unit or any portion of a Unit. Owners shall have the right to lease their Units under the following conditions:

- (a) All leases shall be in writing;
- (b) All leases and lessees' occupancy of Units shall be subject in all respects to the provisions of this Declaration and Association Documents, and a lessee's failure to comply with any terms and conditions of these documents, in any respect, shall be a default under the lease; and
- (c) No lease shall be for fewer than 30 days.

The provisions of subsections 4.07(b) and 4.07(c) shall be contained in each lease, but shall also be deemed to be implied terms of each such lease, whether or not actually contained in the lease.

ARTICLE 5
THE ASSOCIATION
MEMBERSHIP; VOTING RIGHTS; DECLARANT CONTROL

Section 5.01. Membership. Every Owner of one or more Units shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article 5. No person or entity other than an Owner of one or more Units may be a Member. No Owner shall be entitled to sever his ownership interest in a Unit from membership in the Association; however, this shall not be construed as precluding the Owner of a Unit from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership of a Unit with any other person or persons. Declarant, by signing this Declaration, and each subsequent Owner by becoming an Owner of one or more Units, agrees to comply with the Declaration and Association Documents.

Section 5.02. Allocation of Votes. Each Unit shall be allocated votes in the Association equivalent to the numerator of that Unit's undivided interest in the Common Elements as specified in subsection 2.02(b) above; and the total number of votes in the Association shall equal the denominator of that fraction.

Section 5.03. No Cumulative Voting. In the election of Managers, cumulative voting shall not be allowed.

Section 5.04. Membership Appurtenant. By accepting a deed to a Unit or other instrument of conveyance the acceptance of which would render the holder an Owner, membership in the Association shall be appurtenant to and inseparable from a Unit. Membership in the Association may not be transferred except in connection with the transfer of ownership interest in a Unit and shall be automatically transferred by conveyance of ownership interest in a Unit without additional action or documentation.

Section 5.05. Managers. The affairs of the Association shall be managed initially by a Board of Managers consisting of three Managers. When Declarant relinquishes control of the Board to the Owners pursuant to Section 5.06, the Board shall be comprised of not fewer than three Managers, with the number of Managers specified in the Bylaws.

Section 5.06. Management.

(a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (a) five years after the date of recording of this Declaration in the Mesa County, Colorado, real estate records; (b) 60 days after conveyance of 75% of the Units that may be created by the terms of this Declaration to Owners other than Declarant; or, (c) two years after the most recent conveyance of a Unit by Declarant in the ordinary course of business, Declarant may appoint and remove all Officers and all Managers, subject to the limitations stated in this Section 5.06. Surrender or expiration of some or all of Declarant's management control rights under this Section 5.06 shall not limit or impair Declarant's Special Declarant Rights under Article 10.

(b) Not later than sixty (60) days after Conveyance of 25% of the Units which may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not fewer than 25% of the members, of the Board of Managers must be elected by the Owners of Units other than Declarant.

(c) Not later than 60 days after Conveyance of 50% of the total number of Units that may be created by the terms of this Declaration to Owners other than Declarant, not fewer than 33-1/3% of the Managers must be elected by Owners other than Declarant.

(d) Upon the termination of the period of Declarant control specified in subsection 5.06(a) through (c), the Owners shall elect a Board of Managers in accordance with Section 5.05 and the Bylaws, all of whom must be Owners (or in the case of an Owner which is an entity, an officer or manager of that entity) other than Declarant. The Board of Managers so elected and Officers shall take office upon termination of the period of Declarant control specified above.

(e) Notwithstanding anything to the contrary stated elsewhere in this Section 5.06, by a vote of 67% of all persons present and entitled to vote at any meeting of the Members of the Association at which a quorum is present, any Manager, other than a Manager appointed by Declarant, may be removed with or without cause.

(f) Declarant may voluntarily surrender the right to appoint and remove Officers and Managers 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 the Board (as described in a recorded instrument executed by Declarant) be approved by Declarant before they become effective.

(g) Within 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, including, without limitation, those items specified in Section 38-33.3-303(9), C.R.S.

Section 5.07. Quorum. Quorum requirements of the Association shall be specified in the Bylaws.

Section 5.08. Officers. The Officers and their powers and duties shall be specified in the Bylaws.

ARTICLE 6

ASSOCIATION POWERS

Section 6.01. Authority. The Association shall have all rights, powers, and authority specified or permitted by this Declaration, the Articles of Incorporation, the Bylaws, CCIOA, and any other applicable law.

Section 6.02. Actions Against Owners. The Association may take judicial action against any Owner to enforce compliance with any provision of this Declaration or the Association Documents or as otherwise required or allowed by CCIOA or other applicable law. In so doing, the Association may seek and obtain specific performance or mandatory or injunctive relief, or obtain damages and the Association may exercise any other right or remedy for enforcement of this Declaration permitted by law. All of these rights and remedies of the Association shall be cumulative and nonexclusive and may be exercised together or separately and in any order.

Section 6.03. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate, or convey all or any part of any Common Elements or any other Association asset. However, no such encumbrance, dedication, or conveyance shall be effective unless an instrument executed in the manner provided for deeds by Owners entitle to 67% of the votes in the Association agreeing to such encumbrance, dedication, or transfer has been recorded in the Mesa County, Colorado, real estate records. Any of the instruments required by this Section 6.03 may be signed in counterparts which shall together constitute a single agreement.

Section 6.04. Management Agreement and Other Contracts.

(a) The Association may utilize professional management in performing its duties. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three years and shall provide for termination by either party to it, with or without cause and without payment of a termination fee, upon 30 days prior written notice.

(b) Any contracts, licenses or leases entered into by the Association while Declarant controls the Association shall provide for termination by either party to it, with or without cause and without payment of a termination fee, at any time after termination of Declarant's control of the Association, upon 30 days prior written notice.

Section 6.05. Rules and Regulations. The Association, acting through the Board, shall have the right, power and authority from time to time to enact, amend and enforce Rules and Regulations concerning all aspects of the use and occupancy of, and operation and activities on, the Property, so long as such rules are uniform and nondiscriminatory in their application and their enforcement and not otherwise illegal. By way of example and not limitation, the Association may: limit the design, style, size and all other aspects of the exterior sign identifying the business conducted in a Unit; prohibit or otherwise control all aspects of any other signs visible from the exterior of any of the Buildings; and require uniform exterior window and door glass and uniform window treatments on windows visible from the exterior of the Units. The Association shall have the right to levy and collect fines for violation of the Rules and Regulations in amounts determined by the Board from time to time and, in addition, may maintain a proceeding with regard to any violation of the Rules and Regulations for damages, specific performance, injunctive relief, or any other remedy then available under this Declaration, CCIOA, or other applicable law or in equity, all of which rights and remedies shall be cumulative and nonexclusive.

Section 6.06. Procedures. The Board shall approve or disapprove all requests for approval under

Section 2.03 or 6.05 within 30 days after the complete submission of copies of all plans, specifications and other materials which the Board may require in conjunction with the application. If the Board fails to approve or disapprove an application in writing within 30 days after completion of submission to the Board, the application will be deemed to have been approved. The Board shall exercise its reasonable judgment to the end that all attachments, improvements, construction, and alterations to a Building, and any other changes or improvements to the Property, conform to and harmonize with the existing Condominium Project. In its review of any plans, specifications or other materials and information submitted to it, the Board may require that the applicant(s) pay the Association a processing fee for the actual expenses incurred by the Association and the Board in the review and approval process. Such amounts, if any, may be levied as part of any Regular or Special Assessment against the Unit(s) for which the request for Board approval was made. The Board shall maintain written records of its decisions on any applications considered under this Section 6.06.

Section 6.07. Inspection. During initial construction, remodeling, repair or other work on a Unit or Common Elements requiring Association approval, the Association's representative may from time to time in accordance with Section 4.03 enter and inspect any work within the Condominium Project to determine whether the work complies with the provisions of this Declaration.

Section 6.08. Maintenance Accounts; Accounting. If the Association delegates powers of the Board or its Officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (i) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (ii) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, and (iii) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

ARTICLE 7

BUDGETS

Section 7.01. Books and Records; Member's Accounts. The Board of Managers shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association. All books, records, and papers of the Association shall be available for inspection and copying by any Member or Member's representative at the expense of the Member during regular business hours at the principal office of the Association. The Board of Managers may establish reasonable rules concerning notice to be given to the custodian of the records by anyone desiring to inspect them, and payment of costs of reproducing any documents requested by any Member. Any Member shall be entitled to a written statement of his or her account setting forth the amount, if any, of unpaid assessments or other charges due and owing from such Member, and the Association may establish and charge reasonable fees for such statements.

Section 7.02. Annual Budget. The Board of Managers shall cause to be prepared an operating budget, balance sheet, and cash flow statement for the Association no less than annually.

Section 7.03. Delivery and Ratification of Budget. Within 90 days after adoption of any proposed budget, the Board of Managers shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Members and shall set a date for a meeting of the Members to consider ratification of the

budget not more than 60 days after mailing or other delivery of the summary. Unless at that meeting, whether or not a quorum is present, a majority of all Units rejects the budget, the budget is ratified.

Section 7.04. Rejection of Budget. If the proposed budget is rejected, the budget last ratified shall be continued until such time as the Members ratify a subsequent budget proposed by the Board of Managers in the manner provided in Section 7.03.

Section 7.05. Reserve Fund. As part of each annual budget, the Board of Managers shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of any personal property, fixtures, and improvements (including without limitation the Buildings and all other Common Elements) required to be operated or maintained by the Association, based upon age, remaining life, replacement cost, and any other relevant factors.

ARTICLE 8

COVENANT FOR ASSESSMENTS

Section 8.01. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Unit within the Condominium Project, covenants and agrees (and each Owner of any Unit by acceptance of a deed or other conveyance of that Unit, whether or not it shall be so expressed in that instrument, is deemed to covenant and agree) to pay to the Association: (i) all Assessments and charges against that Unit as specified in this Article 8; and (ii) all fees, charges, late charges, attorney fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed in connection with this Declaration, or against that Owner or that Owner's Unit(s) by CCIOA or by any other applicable law.

(a) The Association shall have the right, independent of CCIOA, but subject to the provisions of CCIOA and all other applicable laws, to impose Assessments and reasonable charges for late payment of Assessments, to recover reasonable attorney fees and other legal costs for collection of Assessments and to take other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, to levy and collect reasonable fines for violations of this Declaration or any of the Association Documents.

(b) The lien for Assessments shall have the priority specified in Section 38-33.3-316(2), C.R.S., or other applicable law.

(c) Each such Assessment, together with interest, costs, and reasonable attorney fees, shall also be the joint and several personal obligation of each person and entity who was an Owner of the Unit at the time when the item became due; provided that, this personal obligation shall not pass to the subsequent Owners of the Unit against which the Assessment is made unless expressly assumed by them. No Owner may exempt himself or herself from liability for Assessments by waiver of use or enjoyment of any Common Elements or other assets or benefits of the Association, or by abandonment of any Unit.

(d) Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

(e) Any charge set forth in this Section 8.01 including without limitation all applicable Assessments, from the time such charge becomes due, shall be a charge on and covenant running with the

land, and shall be a continuing lien on the Unit(s) against which each such item is assessed, subject to CCIOA and all other applicable laws. If an Assessment is payable in installments (which shall be at the discretion of the Board), each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(f) The Association's lien on a Unit for Assessments shall be superior to any homestead exemption now or later provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States, unless prohibited by applicable law. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other such exemption as against any Assessment lien.

Section 8.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety, or welfare of the Owners, occupants and users of the Property; for the benefit of any Common Elements; for any other purpose permitted by this Declaration; for any other purpose of the Association, as those purposes (as amended from time to time) are specified in this Declaration, the Articles of Incorporation, or the Bylaws; or as otherwise authorized or permitted by the Act, CCIOA or other applicable law.

Section 8.03. Initial Assessment.

(a) The initial Regular Assessment shall be fixed in an amount set by, and made upon the resolution of, the Board of Managers.

(b) After the initial Regular Assessment, Regular Assessments shall be made no less frequently than annually, based on a budget adopted by the Association as described in this Declaration.

(c) Until the Board of Managers makes the initial Regular Assessment, all expenses of the Association shall be paid by Declarant.

(d) The initial Regular Assessment shall be prorated according to the number of months remaining in the calendar year for which that Regular Assessment is made.

Section 8.04. Regular Assessments. Regular Assessments made for Common Expenses shall be based upon the estimated cash requirements of the Association as the Board shall from time to time determine and may include other proper charges or payments required or permitted by this Declaration or applicable law.

(a) Estimated Common Expenses shall include, but shall not be limited to, the cost of maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the Property and care of the grounds within the Condominium Project, maintenance, repairs, replacements and renovations within and of the Common Elements, wages of any employee(s) of the Association, water and utility charges for the Common Elements, waste disposal and water and sewer charges for the Units, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund.

(b) At the discretion of the Board, Regular Assessments shall be payable in monthly installments, on a prorated basis, due in advance on the first day of each month. The omission or failure of the Association to fix the Regular Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Regular Assessments in excess of the actual expenses incurred in any fiscal year.

Section 8.05. Common Expense Allocation. Each Unit shall be allocated a fraction of the total Common Expenses of the Association equivalent to that Unit's fractional undivided interest in the Common Elements as specified in subsection 2.02(b) above, except as otherwise required by law or as otherwise provided in this Declaration; for example (a) Common Expenses related to Limited Common Elements shall be assessed only against those Units utilizing or benefitting from those Limited Common Elements, (b) Assessments levied by the Association for additional or special expenses related to a certain Unit or certain type of Unit, such as for greater trash production (see Section 4.06) or water or sewer usage, shall be assessed only against such Unit(s), and (c) Common Expenses arising under any of subsections 4.04(c), (d) or (e) shall be assessed as specified in those subsections.

Section 8.06. Special and Capital Assessments. In addition to the Regular Assessments, the Association may levy Special Assessments and Capital Assessments, payable over such a period as the Association may determine, at any time and for any purpose, except as limited by this Declaration, CCIOA or other applicable law. For example, Special Assessments or Capital Assessments may be levied for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, if any, or for any other expense incurred or to be incurred as provided in this Declaration or for any other purpose specified in this Declaration. This Section 8.06 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same manner specified in Section 8.05 for Common Expenses, subject to the right of the Association to assess (i) any extraordinary maintenance, repair or restoration work on fewer than all of the Units against the Owners of those affected Units only, and (ii) any extraordinary insurance costs incurred as a result of the value or use of a particular Owner's Unit or the act or omission of a particular Owner (or his or her agents, employees, guests, tenants, invitees or others under his or her direct or indirect control) against that Owner and (iii) as otherwise expressly provided in this Declaration. Notice in writing of the amount of such Special Assessment or Capital Assessment and the time for payment of the Assessment shall be given promptly to the Owners, and no payment shall be due less than 10 days after such notice shall have been given.

Section 8.07. Assessments for Fines. All monetary fines assessed against an Owner pursuant to this Declaration or the Association Documents, and any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, may be assessed as all or part of any Assessment.

Section 8.08. Effect of Nonpayment; Assessment Lien. Any Assessment, or any installment of any Assessment, which is not paid on or before the due date specified by the Board shall be delinquent. If an Assessment or installment becomes delinquent, the Association, in its sole discretion, may exercise any rights and remedies available under this Declaration or applicable law, all of which shall be cumulative, non-exclusive and exercisable in any order. Unless prohibited by law, those remedies shall include, by way of example and not limitation, the following:

- (a) So long as it is not contrary to applicable law, assess a late charge for each delinquency in such amount as the Association Board of Managers deems appropriate;
- (b) Assess an interest charge from the due date at the maximum rate allowed by CCIOA (presently 21%) or other applicable law or such other lawful rate as the Board of Managers of the Association may establish;
- (c) Suspend the voting rights of the Owner during any period of delinquency;
- (d) Suspend the rights of the Owner, and the Owner's employees, guests, lessees and invitees, to use the Common Elements during any period of delinquency;
- (e) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (f) Bring an action at law or other available legal proceeding against any Owner personally obligated to pay the delinquent Assessments; and
- (g) Proceed with foreclosure of the Association's lien for Assessments as set forth in more detail below.

Section 8.09. Nature of Obligation and Lien.

- (a) The obligation of each Owner to pay Assessments to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The lien for each unpaid Assessment attaches to each Unit at the beginning of each Assessment period and shall continue to be a lien against such Unit until paid. Each Assessment, together with interest, late charges, costs and reasonable attorney fees, shall also be the personal obligation of each person who was an Owner of such Unit at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass by conveyance of a Unit.
- (b) The statutory lien for Assessments provided by CCIOA is prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recordation of this Declaration; and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six 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 8.09) of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.
- (c) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recording of any claim of lien or assessment is required; however, a notice of lien may be recorded at the Association's option, in which event costs and attorney fees incurred in connection with the preparation and filing of such notice may be assessed against the Owner's Unit as all or part of any Assessment. The Board or a designated agent of the Association may prepare such a written notice setting

forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by a Manager, or an officer or designated agent of the Association, and may be recorded in the Mesa County, Colorado, real estate records. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Unit against which it is filed and collected as part of the Assessment.

Section 8.10. Foreclosure Sale. Any foreclosure sale related to an Assessment lien is to be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the Unit in the name of the Association. Upon the timely curing of any Assessment delinquency in any foreclosure action or proceeding, the Association is authorized to file or record a certificate setting forth the satisfaction of such claim and release of such lien, upon payment by the defaulting Owner of a fee determined by the Association to cover the costs of preparing and filing or recording such release, and other expenses incurred.

Section 8.11. Payment of Mortgagee. Any mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien.

Section 8.12. Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Board and upon at least 14 days' written request to the Association's registered agent by personal delivery or United States certified mail, first class postage prepaid, return receipt requested, any Owner, designee of Owner, mortgagee, prospective mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by United States certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting by the Association shall be deemed the date of delivery) within 14 days after receipt of the request, the Association shall have no right to assert a lien upon the Unit against the inquiring party's interest for unpaid Assessments which were due as of the date of the inquiring party's request.

ARTICLE 9

INSURANCE

Section 9.01. Insurance. The Association shall obtain and maintain insurance as required by CCIOA (currently codified at C.R.S. § 38-33.3-313), other applicable law and this Declaration.

Section 9.02. Type of Insurance. Commencing not later than the time of the first conveyance of a Unit to an Owner other than Declarant, the Association shall obtain a master insurance policy insuring against damage to the Common Elements. The master insurance policy insuring the Common Elements shall be for broad form covered causes of loss, shall include the Owners as additional named insureds, and shall include (or the Association shall obtain separately) commercial general liability insurance with single limited coverage of not less than \$1,000,000.00. In addition, if reasonably available, the Association shall maintain managers and officers liability insurance. The Association, as attorney-in-fact, shall have the authority conferred upon it in Article XII to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

Section 9.03. Assessment of Members. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent members causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that multiple properties are damaged by a loss, the Association in its reasonable discretion may assess each member a pro rata share of any deductible paid by the Association.

Section 9.04. Waiver of Subrogation. The Association and Owners each waive any and all rights of recovery against the other, their officers, members, agents and employees, occurring on or arising out of the use and occupancy of the Property to the extent such loss or damage is covered or indemnified by proceeds received from insurance carried by the other party, or for which such party is otherwise reimbursed. Each of the parties shall, upon obtaining the insurance required under this Declaration, notify the insurance carrier that the foregoing waiver of subrogation is contained in this covenant, and, to the extent available, shall require the insurance carrier to include an appropriate waiver of subrogation provision in the policy.

Section 9.05. Fidelity Bond Insurance. If any Owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, a fidelity bond insurance in an aggregate amount equal to not less than two months of current assessments, plus reserve calculated from the then-current budget of the Association.

Section 9.06. Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain a fidelity bond in the same amount required in Section 9.05, unless the Association names such a person as an insured employee in a contract of fidelity insurance described in Section 9.05. The Association may carry or require of an independent contractor employed to manage the Association fidelity bond coverage in an amount greater than that specified in this Section 9.06.

Section 9.07. Premiums. Premiums for insurance and bonds required or permitted under this Article 9 or applicable law are Common Expenses of the Association.

Section 9.08. Additional Insurance. The Association may carry any other insurance it considers appropriate to protect the Association or the members, including insurance on property it is not obligated to insure.

ARTICLE 10

DECLARANT RIGHTS

Section 10.01. Project Development. Declarant reserves the right for itself and any successor Declarant at any time and from time to time to maintain and relocate sales offices, management offices, signs advertising the Condominium Project (of any size) on and/or in one or more of the Units until all Units have been sold to Owners other than Declarant or a successor Declarant.

Section 10.02. Declarant Control of Changing Unit Boundaries. Despite anything to the contrary stated elsewhere in this Declaration, until the later of (i) Declarant no longer owning a Unit or (ii) ten years after the date of recording of this Declaration in the Mesa County, Colorado, real estate records, Declarant shall have the right, in Declarant's sole and absolute discretion:

- (a) To combine any Units, owned by Declarant without the approval of any other

Owners or of the Association, subject to all other requirements of Section 2.03 and any required governmental approvals, ; and

- (b) To grant or deny consent to any proposal to change Unit boundaries.

ARTICLE 11
GENERAL PROVISIONS

Section 11.01. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions, which shall remain in full force and effect. To the extent feasible, any non-complying provision shall be reformed, and in any case the remainder of the Declaration shall be interpreted to best comply with applicable law so as to preserve the intent of this Declaration as demonstrated by all of its provisions, including the non-complying provision(s).

Section 11.02. Conflict of Provisions. In case of any conflict between this Declaration and any of the Association Documents, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. Both the Articles of Incorporation and Bylaws shall control over the Rules and Regulations.

Section 11.03. Compliance with Provisions of Declaration and Association Documents. Each Owner shall comply strictly with the provisions of this Declaration and the Association Documents, and the decisions and resolutions of the Association as the same may be lawfully made and amended or modified from time to time. Failure to comply with any of the above shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all reasonable attorney fees incurred in connection with such action, which action may be maintained by the Association or, in a proper case, by an aggrieved Owner.

Section 11.04. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Property and Units, binding Declarant and all persons and entities claiming by, through, or under Declarant for a period of 20 years from the date of recording of this Declaration in the Mesa County, Colorado, real estate records, which shall be automatically extended for successive periods of 10 years each, without action by or notice to any person or entity, unless amended or terminated as provided below.

Section 11.05. Amendment and Termination. Subject to the provisions of CCIOA, all or any portion of this Declaration may be supplemented, changed or canceled in whole or in part at any time by the vote or agreement of 67% of the votes entitled to be cast by the Members, except that any amendment that shall have the effect of changing the Property use, or the architectural design or construction requirements related to any modification of any Building shall require the consent of 90% of such votes. Such agreement may be in any number of counterparts. Such an amendment shall be effective when duly recorded in the Mesa County, Colorado, real estate records.

Section 11.06. Technical Amendments. Declarant reserves and is granted the right and power to (i) amend this Declaration as permitted by its terms, CCIOA or other applicable law, and (ii) record technical amendments to this Declaration, the Articles of Incorporation or the Bylaws at any time prior to the termination of Declarant's control of the Association for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of, or

inconsistencies between, such documents.

Section 11.07. Rights of Declarant Incident to Construction. An easement is retained by and granted to Declarant and its successors and assigns for access, ingress and egress over, in, upon, under, and across the Common Elements, including but not limited to the right to store materials on such areas and to make such other use of such areas as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property, including without limitation construction of improvements indicated on the Map; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his or her employees, guests, or invitees, to or of that Owner's Unit(s). Declarant, for itself and its successors and assigns, retains a right to store construction materials in any Unit owned by Declarant and to make such other use of it as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Condominium Project, the performance of Declarant's obligations under this Declaration and/or the sale of the Units. The rights of Declarant reserved in this Section 11.07 shall expire 10 years after the recording of this Declaration or upon earlier conveyance of the last Unit owned by Declarant or a successor Declarant to another Owner.

Section 11.08. Notice. Any notice or demand required or permitted by this Declaration not required by its terms or applicable law to be given in another manner shall be in writing and shall be personally delivered or sent by recognized national overnight courier service (such as Federal Express) or by United States first class or certified mail, postage prepaid. Notice not personally delivered shall be sent to the address of the Owner of the Unit(s) to receive notice at the address provided by such Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address (if any) of the Owner specified in the deed recorded in the Mesa County, Colorado, real estate records by which that Owner took title, and (if different) to the street address of that Unit stated in that deed. Notice shall be effective when given in the manner specified above.

Section 11.09. Section Headings. The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

Section 11.10. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of Declarant, each Owner, and each and all of their heirs, personal representatives, successors in interest, and assigns.

Section 11.11. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained in this Declaration are separate and distinct from any zoning, building or other law, ordinance, rule or regulation of the City, or of any other governmental authority having jurisdiction over the Property which now or in the future may contain different requirements from or in addition to those contained in this Declaration, or which may prohibit uses permitted in it or permit uses prohibited in it. In the event of any conflict between the provisions of this Declaration and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then, to the extent possible, the Owner must comply with these covenants, conditions and restrictions, unless such compliance would result in a violation of such law, ordinance, rule or regulation. In such case, upon a finding in a court of proper jurisdiction that compliance with this Declaration would result in such a violation, the Association shall waive any such covenant, condition or restriction to the extent it results in such a violation.

Section 11.12. Transfer of Declarant Rights and Obligations. Except to the extent expressly prohibited by applicable law, any or all rights or obligations (or both) of Declarant (including without limitation rights under Article 10) may be transferred by Declarant to any person or entity by an instrument describing the rights transferred, signed and acknowledged by Declarant, and be recorded in the Mesa County, Colorado, real estate records.

DECLARANT:

Kokopelli Professional Center, LLC,
a Colorado limited liability company

By: McCurter Land Company, L.L.C.,
an Arkansas limited liability company, its Manager

By: *James R. McCurter*
James R. McCurter, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 14th day of March, 2005, by James R. McCurter as Managing Member of McCurter Land Company, L.L.C., Manager of Kokopelli Professional Center, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 5-5-15

Kelly C Edington
Notary Public

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