



*Town of Carbondale  
511 Colorado Avenue  
Carbondale, CO 81623*

**AGENDA  
PLANNING & ZONING COMMISSION  
THURSDAY, June 13, 2019  
7:00 P.M. TOWN HALL**

1. CALL TO ORDER
2. ROLL CALL
3. 7:00 p.m. – 7:05 p.m.  
Minutes of the May 16, 2019 meeting .....Attachment A
4. 7:05 p.m. – 7:10 p.m.  
Public Comment – Persons present not on the agenda
5. 7:10 p.m. – 7:15 p.m.  
Resolution 7, Series of 2019 – 417 Sopris Avenue Approving Minor Site Plan .....Attachment B
6. 7:15 p.m. – 7:50 p.m.  
PUBLIC HEARING – Condominium Exemption.....Attachment C  
Applicant: Carlo Angelini  
Location: 718 Lincoln Avenue
7. 7:50 p.m. – 7:55 p.m.  
Staff Update
8. 7:55 p.m. – 8:00 p.m.  
Commissioner Comments
9. 8:00 p.m. – ADJOURN

**\* Please note all times are approx.**

Upcoming P & Z Meetings: June 27 – TBD  
July 11 – TBD

**MINUTES**  
**CARBONDALE PLANNING AND ZONING COMMISSION**  
Thursday May 16, 2019

**Commissioners Present:**

Michael Durant, Chair  
Ken Harrington, Vice-Chair  
Tristan Francis (2<sup>nd</sup> Alternate)  
Jeff Davlyn  
Jade Wimberley  
Jay Engstrom

**Staff Present:**

John Leybourne, Planner  
Mary Sikes, Planning Assistant

**Commissioners Absent:**

Nicholas DiFrank (1<sup>st</sup> Alternate)  
Marina Skiles  
Nick Miscione

**Other Persons Present**

Chris Beebe

The meeting was called to order at 7:04 p.m. by Michael Durant.

**April 25, 2019 Minutes:**

Jade made a motion to approve the April 25, 2019 minutes. Jeff seconded the motion and they were approved unanimously with Jade, Tristan and Jeff abstaining.

**Resolution 6, Series of 2019 - Approving ADU – 182 Sopris Avenue**

Ken made a motion to approve Resolution 6, Series of 2019, approving the Minor Site Plan Review and Conditional Use Permit at 182 Sopris Avenue. Jay seconded the motion and it was approved unanimously.

**Public Comment – Persons Present Not on the Agenda**

There were no persons present to speak on a non-agenda item.

**PUBLIC HEARING – Minor Site Plan Review & Special Use Permit**

**Location: 417 Sopris Avenue**

**Applicant – Chris Beebe**

John said that this is an application for a Minor Site Plan Review and Special Use Permit. He stated that the Commission is required to hold a public hearing and approve the application, deny it or continue the public hearing.

John explained that the applicant is proposing to construct a single-family residence with an attached accessory dwelling unit.

John continued by saying that a Single-Family Dwelling and an ADU was originally approved for this parcel in 2014 under the pre-UDC land use code. He stated that the applicant submitted a building permit application recently. He said that Staff determined that the changes to the originally approved structure merited a resubmittal and review under the UDC

John said that Staff also debated whether or not the application met the purpose section of the OTR district but ultimately felt the application was in conformance with the surrounding neighborhood and that it should proceed to the P&Z for review.

John outlined the following:

### **Zoning**

An ADU is allowed to be up 10% of the total lot size up to a maximum of 650 square feet, the proposed ADU is 524 square feet in size or about 7% of the lot size.

### **Setbacks**

The required setbacks in the OTR zone district have been met.

### **Maximum Impervious Surface**

40% maximum impervious allowed, plans indicate 32.4% of the lot will be impervious.

### **Building Height**

The proposed structure is indicated to be 24.5 feet in height with a maximum allowed of 25 feet.

### **Parking**

Section 5.8.3. of the UDC requires 2.5 parking spaces for the main dwelling, and 2 spaces for an ADU.

Two spaces are provided in the garage with an additional three space to the sides of the garage for a total of 5 parking spaces. All parking is accessed from the alley.

### **Building Design**

The structure is setback from the Sopris Avenue ROW. The front of the structure has variations utilizing “stepping” of the walls and roof. The front door is street facing located on a stepped back porch. There is a variation in materials to each side of the structure as well as metal louvered sunshades over the windows of the structure.

The surrounding neighborhood is an eclectic mix of styles and designs. The types of structures range from the Historic Fender to house to more modern designs that are similar in nature to the proposed structure.

Jay asked for clarification if the Commission were just reviewing the ADU or the entire house.

John said the review is for the entire project.

Chris Beebe explained the project. He said that it was schematically close to his previous plans approved. He said that the outdoor space for the ADU was on the roof. He stated that he appreciates the Town's efforts to provide housing with an ADU, in the Code. He said that this lot was part of the garden and orchard for the Fender house and that his design lends itself to the historical home. He said that this design is more interesting than his previous design for this lot.

There were no members of the public present

### **Motion to Close Public Hearing**

A motion was made by Jeff to close the public hearing. Jay seconded the motion and it was approved unanimously.

Jade asked if the roof was flat or not.

Chris explained that the roof was flat and that less square footage would be lost with a flat roof verses a slanted roof.

Discussion ensued about other roofs around town.

Jay said that the application looked great.

### **Motion**

Jay made a motion to approve the Minor Site Plan Review and Conditional Use Permit for an Accessory Dwelling Unit with the conditions in the Staff report. Ken seconded the motion and it was approved unanimously.

### **Staff Update**

John said that the Commission had received an email regarding the work session with the Board this coming Tuesday regarding the housing study and discussion of next steps.

John said that there were no applications for the May 30 meeting and asked the Commission if they would like to meet. The Commission canceled the meeting.

### **Commissioner Comments**

Michael asked if there were comments on the Housing Study.

Jeff commented that it was interesting and illuminating. He said that there was a gap identified, young professionals can't afford to live here verses elsewhere.

Ken said that as land cost prices go up annexation could be a possibility.

There was a discussion regarding short term rentals.

**Motion to Adjourn**

A motion was made by Ken to adjourn. Jeff seconded the motion and the meeting was adjourned at 8:15.

DRAFT

RESOLUTION NO. 7  
SERIES OF 2019

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE TOWN  
OF CARBONDALE, COLORADO, APPROVING A MINOR SITE PLAN REVIEW AND  
SPECIAL USE PERMIT FOR PROPERTY LOCATED IN THE TOWN OF  
CARBONDALE, COLORADO

WHEREAS, Chris Beebe ("Applicant") requested approval of a Minor Site Plan Review and Special Use Permit on behalf of Said Mohammadioun ("Owner") to construct a single family structure and an attached Accessory Dwelling Unit (ADU) on property located at 417 Sopris Avenue (aka Original Townsite Carbondale, Block:17 Excepting the Easterly 10 feet of out lot 8, Parcel A, Gene Fender Lot Line Adjustment), Carbondale, Colorado (Property);

WHEREAS, the Planning and Zoning Commission of the Town of Carbondale reviewed this application during a Public Hearing on May 16, 2019 and approved said application on the terms and conditions set forth below;

NOW, THEREFORE BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF CARBONDALE, COLORADO, that the Minor Site Plan Review and Special Use Permit is hereby approved, subject to the following conditions and findings:

Conditions of Approval

1. All development shall comply with the Site Plans and Building Elevations submitted with the application.
2. Water rights for the ADU shall be due at the time of building permit.
3. The applicant shall be responsible for all building permit fees, tap fees and other associated fees at the time of building permit.
4. All other representations of the Applicant in written submittals to the Town or in public hearings concerning this project shall also be binding as conditions of approval.
5. The Applicant shall also pay and reimburse the Town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.

Findings for Approval - Site Plan Review Criteria

1. The site plan is consistent with the Comprehensive Plan.
2. The site plan is consistent with any previously approved subdivision plat, planned unit development, or any other precedent plan or land use approval as applicable;
3. The site plan complies with all applicable development and design standards set forth in this Code
4. Traffic generated by the proposed development will be adequately served by existing streets within Carbondale.

Findings for Special Use Permit

1. The proposal meets the purposes of the zone district in the OTR zone district, specifically care has been taken to meet all criteria, regulations and dimensional requirements. The proposed ADU will be contained within the proposed volume of the structure.
2. The special use shall comply with all applicable fire, building, occupancy and other municipal code provisions as a building permit will be required for both the single-family residence and the ADU;
3. The special use shall not have a significant traffic impact the neighborhood.
4. The special use shall not otherwise have an adverse effect upon the character of surrounding uses;
5. The impacts of the proposed use on adjacent properties and the surrounding neighborhood or such impacts have been minimized in a satisfactory manner.
6. The use shall not create a nuisance and such impacts shall be borne by the property owners of the property on which the proposed use is located rather than by adjacent properties or the neighborhood.
7. Access to the site is adequate for the proposed use, considering the width of adjacent streets and alleys, and safety.
8. The project is in scale with the existing neighborhood or will be considered to be in the scale with the neighborhood as it develops in the immediate future as all uses will presently be accommodated within the volume of the structure.

9. The project maximizes the use of the site's desirable characteristics, specifically the distance of the structure from Sopris Avenue.

INTRODUCED, READ, AND PASSED THIS \_\_\_\_ day of \_\_\_\_\_, 2019.

PLANNING AND ZONING COMMISSION OF  
TOWN OF CARBONDALE

By: \_\_\_\_\_  
Michael Durant  
Chair





**TOWN OF CARBONDALE  
511 COLORADO AVENUE  
CARBONDALE, CO 81623**

## Planning and Zoning Commission Agenda Memorandum

Item No: 6

Attachment: C

Permit No: ZU19-9

Meeting Date: 6/13/2019

**TITLE:** 718 Lincoln Condominiums/Condominium Exception

**SUBMITTING DEPARTMENT:** Planning Department

**APPLICANT:** Carlo Angelini

**OWNER:** PD investments, LLC.

**LOCATION:** 718 Lincoln Avenue

**Zoning:** Residential Medium Density, R/MD

**ATTACHMENTS:** Condominium Application

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### BACKGROUND

This is an application to divide a 4-unit apartment building into a 4-unit condominium complex. The Planning Commission is required to hold a public hearing and approve the application or deny it. The Commission may also continue the public hearing.

### DISCUSSION

As the building is already in place only the P&Z will be reviewing the application through the Condominium Exemption process. The building and site plan have been confirmed to have been constructed per the submitted condo plat. Each unit in the building is serviced by separate meters and shutoffs as required. The four units are each 832.2 square feet in size and have two reserved and dedicated parking spaces that are accessed from the alley to the rear of the building. Trash service is also located to the rear of the building in an enclosure.

A Condo Exemption may be approved if it meets all of the below criteria per Section 2.6.6.B Applicability as well as Section 2.6.6.D Condominium Exemptions.

- a. The subject property is suitable for subdivision within the meaning of Chapter 17.06: *Subdivision*;
- b. All public utilities are in place on, or immediately adjacent to, the subject property;
- c. Each lot has the necessary dedicated public access required by this code at the time of the subdivision exemption application;
- d. The subdivision plat shall comprise and describe not more than three lots and, unless the property to be subdivided is wholly owned by the Town or another federal, state or local government entity, the entire parcel to be subdivided shall be no more than five acres in size; and
- e. The preparation of engineered design data and specifications is not needed to enable the Commission to determine that the subject property meets the design specifications in Chapter 17.06: *Subdivision*. (*this section is addressed below*)

#### D. Condominium Exemptions

##### 1. Applicability

- a. The Planning and Zoning Commission may exercise discretion to grant an exemption from those requirements applicable to subdivisions resulting from the creation of condominium units if the Planning and Zoning Commission finds all of the following:
  - i. The proposed condominium project complies with the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 et. seq.;
  - ii. All of the proposed condominium units are located in a building existing at the date of the filing of the application;
  - iii. Each condominium unit has adequate ingress and egress directly or through common or limited common elements to public access;
  - iv. The preparation of engineered design data and specifications is not needed in order to enable the Commission to determine that the subject property meets design specification in Chapter 17.06: *Subdivision*;
  - v. No part of the area depicted in the proposed condominium map has been previously subdivided pursuant to a subdivision exemption or subdivision variance; and
  - vi. Utility lines for water, sewer, and power are already installed within, adjacent to, or within 200 feet of the area proposed to be condominiumized.

#### **FISCAL ANALYSIS**

Approval of the condominiumization will allow the units to be individually transferred and owned.

## RECOMMENDATION

Staff recommends that the following motion be approved: **Move to approve the 718 Lincoln Avenue Condominium Exemption Plat with the suggested findings and conditions below.**

### Findings:

The property is capable of accommodating structures devoted to the intended use of the land; is free from natural hazards such as flooding, falling rock, landslides and snowslides; is served by a street system providing safe and convenient access, and is provided with accessible utility installations; with all of the foregoing intended to promote the health, safety and welfare of the citizens of the town.

### Conditions:

1. The condominium plat shall be in a form acceptable to and approved by Town Staff prior to recording. The plat shall be recorded with the Garfield County Clerk and Recorder within ninety (90) days of the date of approval.
2. The applicant shall submit a revised Condominium Declaration and associated Bylaws for Town Staff review and approval prior to recordation of the Declarations with the plat.
3. All representations of the Applicant and Applicant's representatives at the Public Hearing shall be considered conditions of approval.
4. The Applicant shall be responsible for all recording costs and shall pay all fees associated with this application to the Town, including any professional fees, as set forth in Section 1.30.030 of the Municipal Code.

Prepared By: John Leybourne



Town of Carbondale  
511 Colorado Ave  
Carbondale, CO 81623  
(970)963-2733

Pre-Application Meeting Date \_\_\_\_\_  
Fees 300.00 Date Pd 4-9-19

### Land Use Application

#### PART 1 - APPLICANT INFORMATION

Applicant Name: CARLO ANGELINI Phone: 970-274-1169  
Applicant Address: 30 FELDMAN/WERTZ - 711 E. VALLEY RD, UNIT 202B, BASALT 81621  
E-mail: ATAJ.BUILDERS@YAHOO.COM  
Owner Name: CARLO ANGELINI Phone: 970 274 1169  
Address: 30 FELDMAN/WERTZ, 711 E. VALLEY RD, UNIT 202B BASALT 81621  
E-mail: ATAJ.BUILDERS@YAHOO.COM  
Location of Property: provide street address and either 1) subdivision lot and block; or 2) metes and bounds:  
718 LINCOLN AVE. CARBONDALE

#### PART 2 - PROJECT DESCRIPTION

General project description:

CONVERT EXISTING (4) UNIT APARTMENT BUILDING INTO  
CONDOMINIUM COMPLEX. NO CHANGES TO UNIT SIZE OR EXTERIOR

Size of Parcel: \_\_\_\_\_ # Dwelling Units: 2 Sq Ftg Comm: \_\_\_\_\_  
Type of Application(s): CONDOMINIUM CONVERSION  
Existing Zoning: RESIDENTIAL Proposed Zoning: RESIDENTIAL - (NO CHANGE)

#### PART 3 - SIGNATURES

I declare that I have read the excerpt from the Town of Carbondale Municipal Code Article 8 Land Use Fees. I acknowledge that it is my responsibility to reimburse the Town for all fees incurred as a result of this application.

I declare that the above information is true and correct to the best of my knowledge.

Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

APRIL 29, 2019

Signature of all owners of the property must appear before the application is accepted.

Owner Signature \_\_\_\_\_

Date \_\_\_\_\_

Owner Signature \_\_\_\_\_

Date \_\_\_\_\_

STATE OF COLORADO )

COUNTY OF ~~DANFELD~~ EAGLE ) ss.

The above and foregoing document was acknowledged before me this 29 day of

APRIL 2019, by CARLO ANGELINI

Witness my hand and official

My commission expires: AUG 16 2020

KAYLA M WARREN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20184030838  
MY COMMISSION EXPIRES AUGUST 16, 2020

Notary Public \_\_\_\_\_

March 11, 2019

John Leyborne  
Town of Carbondale  
Planning Department  
Town Hall, Carbondale

Re: Condominiums - 718 Lincoln Ave.

Dear John:

I represent Carlo Angelini, who is the declarant of the 718 Condominium Association. As requested, to be delivered at the pre-planning meeting, the following statement of use is submitted:

1. The 718 Condominium Proposal is to convert four (4) existing apartments in the building into separately conveyable condominium units.
2. Besides some upgrades into the finishes of the building and inside the units, there are no changes to the existing apartments as far as size, orientation or use.
3. Each unit is a two-bedroom, one-bathroom residential unit.
4. Each unit has its own limited common element which consists of either a balcony for the two second floor units and a patio for the two ground floor units.
5. Each unit will have designated parking as an additional limited common element.
6. The common elements are typical; the grounds outside the building and the staircases.

If there is any additional information you require, please let me know. Thank you.

Cordially,

Feldman & Wertz, LLP

By: \_\_\_\_\_  
Alan Feldman

GENERAL WARRANTY DEED

TOMMY JOE OGBURN, JR., having an address of 230 Churchill Loop, Grapevine, TX 76051, ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration in hand paid to Grantor herein by CARLO ANGELINI having an address of 27 Narrow Way, Aspen, CO 81611, ("Grantee") receipt of which is hereby acknowledged and confessed; has GRANTED, SOLD AND CONVEYED, and by these presents does hereby GRANT, SELL AND CONVEY unto Grantee all of the following real property ("Property"), described as follows:

Lots 4, 5 and 6,  
In Block 8,  
Of Weaver's Addition,  
To the Town of Carbondale,  
County of Garfield,  
State of Colorado.

Which has a street address of: 718 Lincoln Avenue, Carbondale, CO 81623.

THIS CONVEYANCE IS MADE BY THE GRANTOR SUBJECT TO THE FOLLOWING EXCEPTIONS:

- a. Discrepancies, conflict in boundary lines, shortage in area and encroachments which would be disclosed through a correct and proper survey or physical inspection of the Property.
- b. Any and all covenants, conditions, easements, reservations, rights of way and restrictions affecting the Property as evidenced by instruments filed in the public records of the county wherein the Property is located.
- c. Any water rights, claims or title to water, in, on or under the land, or ditches or ditch rights, water share, water stock, whether shown by public record or otherwise.
- d. Any interest in oil, coal and other minerals or mineral rights, whether express or implied, associated with , or incidental to the ownership of the Property, or the exercise of rights under any oil, gas, coal or mineral reservation, grant or lease and all rights, privileges and easements with respect thereto, or assignments thereof, or interest therein, and;
- e. Real Property Taxes, general assessments and special assessments on the Property being conveyed hereby, becoming due and payable after the date of this Deed.

TO HAVE AND TO HOLD the herein described Property, together with all in singular the rights appurtenances thereto belonging unto the said Grantee, Grantee's heirs, legal representatives, successors and assigns forever. Grantor does hereby bind itself and its successors and assigns to WARRANTY AND FOREVER DEFEND the Property described herein, unto the said Grantee and Grantee's heirs, legal representatives, successors and assigns against every person whomsoever lawfully claiming the same or any part thereof, by, through or under Grantor, but not otherwise.

EFFECTIVE AS OF THIS 25th DAY OF April, 2019

GRANTOR:

TOMMY JOE OGBURN, JR.

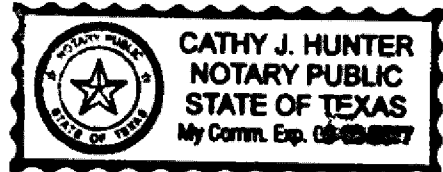
By: 

STATE OF Texas  
COUNTY OF Garrett

The foregoing General Warranty Deed was acknowledged before me this 25th day of April, 2019 by Tommy Joe Ogburn, Jr.

Witness my hand and official seal.

My Commission expires: 09-03-2021  
Cathy J. Hunter  
Notary Public



09-03-21



718-724 Lincoln Condominium Map  
Lots 4, 5 & 6, Weaver Addition to the Town of Carbondale  
Section 34, T.7S., R.88W. of the 6th P.M.  
Garfield County, Colorado

CERTIFICATE OF DEDICATION AND OWNERSHIP:

THE UNDERSIGNED, TOMMY JOE OGBURN, JR., BEING SOLE OWNER IN FEE SIMPLE OF ALL THAT REAL PROPERTY SITUATED IN GARFIELD COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2019.

OWNER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

STATE OF COLORADO }  
COUNTY OF GARFIELD }

THE FOREGOING CERTIFICATE OF DEDICATION AND OWNERSHIP WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2019, BY \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

CERTIFICATE OF TAXES PAID:

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT THE ENTIRE AMOUNT OF TAXES AND ASSESSMENTS DUE AND PAYABLE AS OF \_\_\_\_\_, UPON ALL PARCELS OF REAL ESTATE DESCRIBED ON THIS PLAT ARE PAID IN FULL.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2019.

GARFIELD COUNTY TREASURER

TITLE CERTIFICATE:

I, \_\_\_\_\_, AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO, OR AGENT AUTHORIZED BY A TITLE INSURANCE COMPANY, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE TO ALL LANDS SHOWN UPON THIS PLAT AND THAT TITLE TO SUCH LANDS IS VESTED IN \_\_\_\_\_, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES (INCLUDING MORTGAGES, DEEDS OF TRUST, JUDGMENTS, EASEMENTS, CONTRACTS AND AGREEMENTS OF RECORD AFFECTING THE REAL PROPERTY IN THIS PLAT), EXCEPT AS FOLLOWS:

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2019.

TITLE COMPANY: \_\_\_\_\_

AGENT: \_\_\_\_\_

OR:

ATTORNEY: \_\_\_\_\_

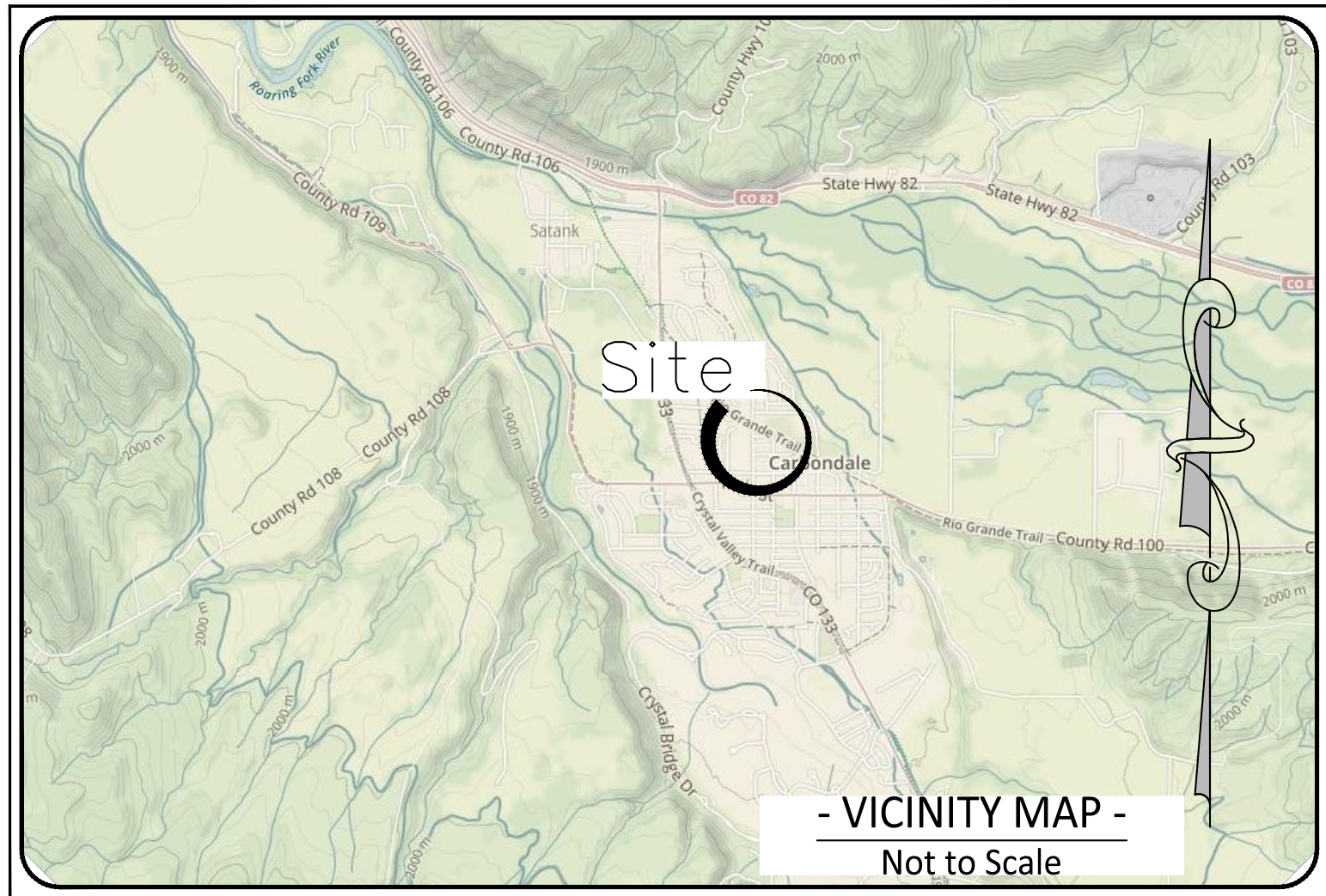
COLORADO ATTORNEY REGISTRATION NO. \_\_\_\_\_

CLERK AND RECORDER'S CERTIFICATE:

THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF GARFIELD COUNTY, COLORADO, AT \_\_\_\_ O'CLOCK \_\_\_\_\_, ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019, AND IS DULY RECORDED AS RECEPTION NO. \_\_\_\_\_

CLERK AND RECORDER

BY: \_\_\_\_\_  
DEPUTY



SHEET INDEX

SHEET 1 - CERTIFICATES, NOTES, VICINITY MAP  
SHEET 2 - EXTERIOR BOUNDARY AND IMPROVEMENTS  
SHEET 3 - FIRST FLOOR AND SECOND FLOOR PLAN VIEW  
SHEET 4 - ELEVATION CROSS SECTION VIEWS

Total Area	
Unit	Sq. Ft.
718	832.2
720	832.2
722	832.2
724	832.2

PROPERTY DESCRIPTION:

Lots 4, 5 & 6, Block 8 Weaver Addition to the Town of Carbondale according to the Plat Recorded at Reception No. 21607

Garfield County, Colorado

NOTES:

1. Basis of Bearings: Bearings shown hereon are based on a bearing of S00°00'00"E between the northeast corner of Lot 4 as marked by a No. 5 Rebar & Yellow Plastic cap inscribed LS 14111 and the southeast corner of Lot 4 as marked by a No. 5 Rebar & Yellow Plastic cap (illegible), both corners being monumented as shown hereon.
2. This map has been prepared pursuant to client request for a Condominium Map.
3. Date of field survey: January 2019.
5. Vertical Information:  
  
Datum: Elevation information shown hereon is based upon NAVD88 Datum derived utilizing Geoid Model 12B, and relative to a benchmark elevation of 6175.4' at the Southeast corner of Lot 4, as monumented and shown hereon.
6. Due to current snow cover on this property (1"-6"±), it is possible that some ground level features may not be shown, or the locations shown hereon may be approximate (i.e. edge of drives, walks, water valves, etc.).
7. SGM will not be responsible for any changes made to this document after it leaves our possession. Any copy, facsimile, etc., of this document must be compared to the original signed, sealed and dated document to insure the accuracy of the information shown on any such copy, and to insure that no such changes have been made.
8. Fences shown hereon, if any, have been shown for general reference and do not necessarily depict limits of ownership.
9. General Common Elements ("G.C.E."). "Common Elements" or "General Common Elements" ("G.C.E.") shall mean all portions of the Building and the Property other than the Units, as shown on this Condominium Map or identified in the Declaration, and shall include, without limitation, the following:

(a) The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, fireplace flues, chimneys, chimney chases, roofs, patios, corridors, lobbies, vestibules, entrances and exits; and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith and the areas designated on this Condominium Map as including those installations; trash rooms and storage rooms; spa equipment rooms and elevators and stairs), except for the Units; and

(b) All yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens, and related facilities, if any, upon the Property adjacent to the Building and designated on this Condominium Map as General Common Elements ("G.C.E."); and

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

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

The Common Elements shall be owned by the Owners of the separate Condominium Units, each Owner of a Condominium Unit having an undivided interest in the Common Elements.

Limited Common Elements ("L.C.E.") means portions of the Common Elements reserved for the exclusive use of those entitled to occupy one or more, but less than all, Units, as more particularly set forth in the Declaration or identified as Limited Common Elements ("L.C.E.") on this Condominium Map.

10. The property shown hereon is subject to all easements, rights-of-way, building setbacks or other restrictions of record, as such items may affect this property. This Improvement Location Certificate does not represent a title search by this surveyor to determine ownership or to discover easements or other encumbrances of record. All information pertaining to ownership, easement and other encumbrances of record has been taken from the title insurance commitment issued by Land Title Guarantee Company, Commitment No. GW63013345, having an effective date of 12/05/2018.

Every attempt has been made to show all easements and rights-of-way referred to in the title insurance policy referenced above. Some such items may not be shown if they are standard title commitment exceptions, or if not sufficiently described in recorded documents to be shown graphically, or if they are situated on adjacent properties, or if they affect the property in general, etc. In regards to other such items:

ITEM 9: Right of Proprietor of a vein or lode to extract and remove his ore therefrom should same be found to penetrate or intersect the premises as reserved in United States Patent recorded May 23, 1892, in Book 12 at Page 160. Applies - Nothing graphically to depict.

ITEM 10: Rights of Way and Easements according to the plat of Weaver's Addition to the Town of Carbondale recorded March 23, 1899 as Reception No. 21601, including: A. Reserving at all times to himself, his heirs and assigns the right to conduct water along and across the same. Applies - Nothing graphically to depict.

ITEM 11: Rights of Way and Easements according to the the map showing the First Addition to the Town of Carbondale recorded June 24, 1982 as Reception No. 32163. Applies - Nothing graphically to depict.

SURVEYOR'S CERTIFICATE:

I, Shawn Binion, being a registered Professional Land Surveyor, licensed in the State of Colorado, do hereby certify that this Condominium Map was prepared by SGM on this date, \_\_\_\_\_ based on site conditions as they existed during a field survey performed in January 2019, under my direct supervision and checking and substantially depicts the location and the horizontal and vertical measurements of all corners and levels and the dimensions of all units thereby created are substantially complete. Information required under C.R.S. 38-33.3-209 and 38-51-106.

Shawn Binion  
Colorado PLS # 38200  
For, and on behalf of SGM

**SGM**  
118 West Sixth Street, Suite 200  
Glenwood Springs, CO 81601  
970.945.1004 www.sgm-inc.com

718-724 Lincoln Condominim Map  
718 Lincoln Avenue

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Notice: According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event shall the limitation period be extended by the discovery of the defect more than ten years from the date of the certification shown herein.

2018-05-18

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Date: 05/01/18

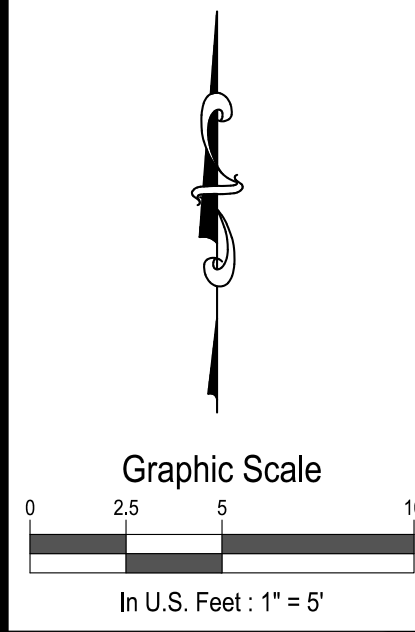
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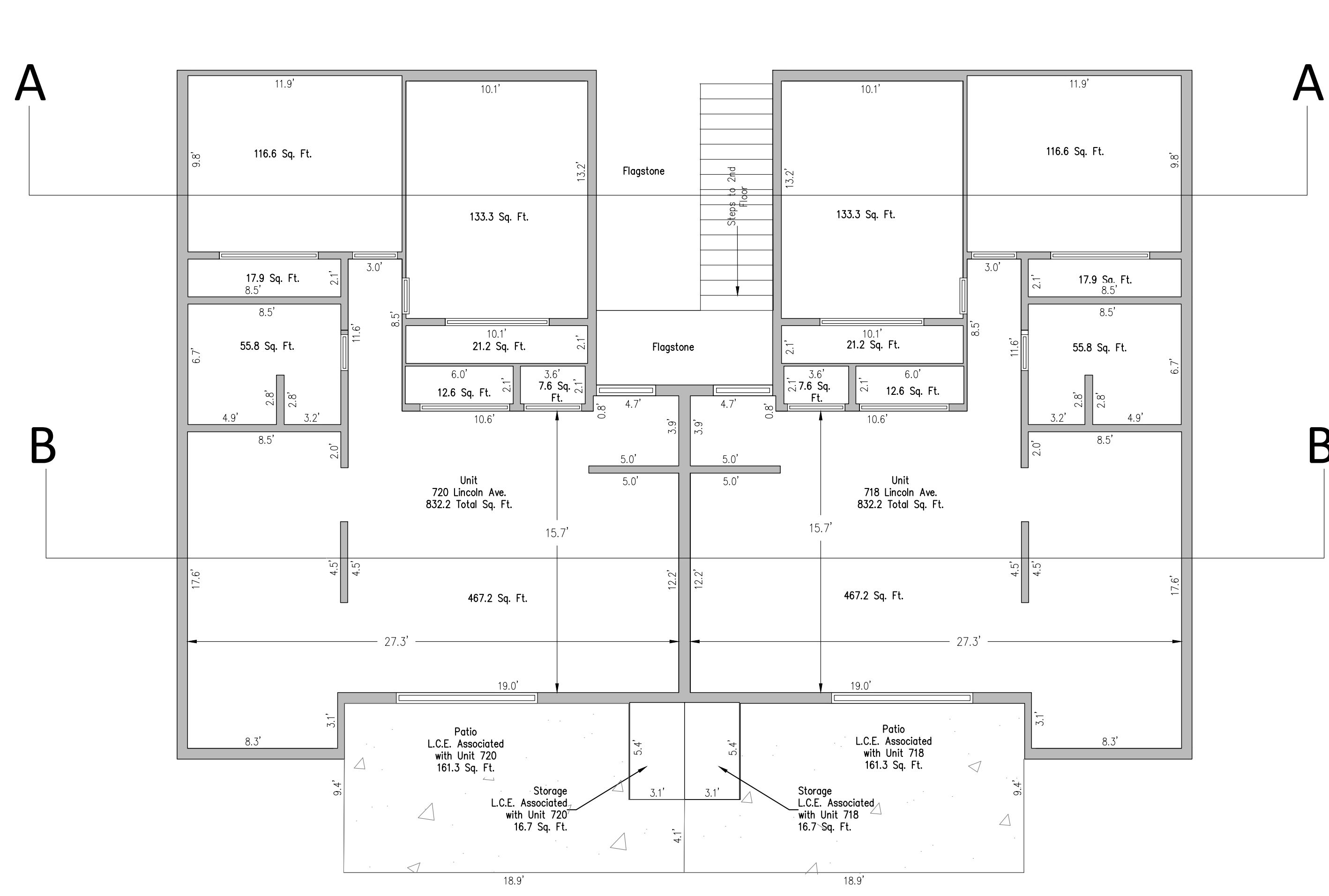


718-724 Lincoln Conmdominium Map  
Lots 4, 5 & 6, Weaver Addition to the Town of Carbondale  
Section 34, T.7S., R.88W. of the 6th P.M.  
Garfield County, Colorado

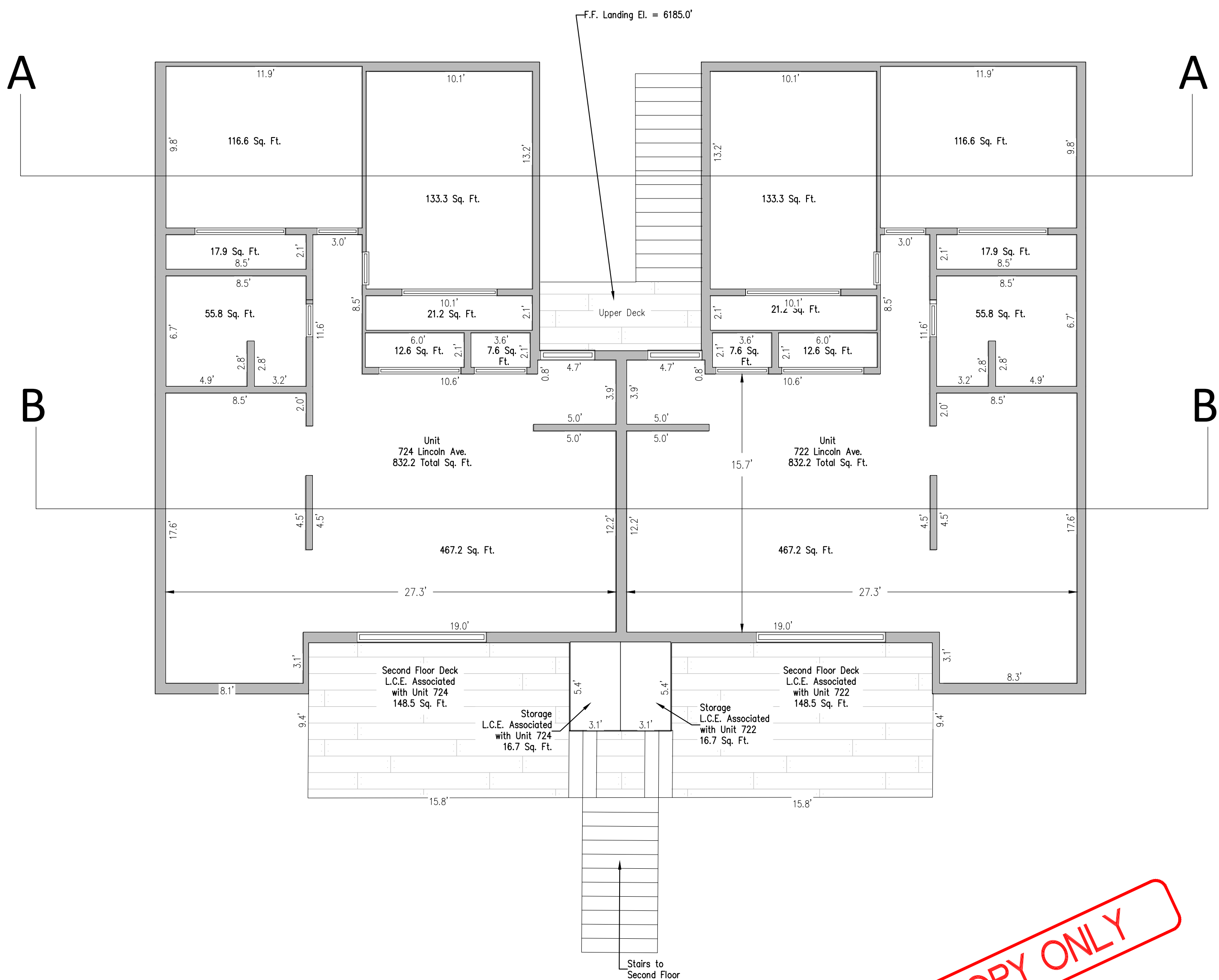


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718-724 Lincoln Condominium Map  
718 Lincoln Avenue



First Floor Plan View



Second Floor Plan View

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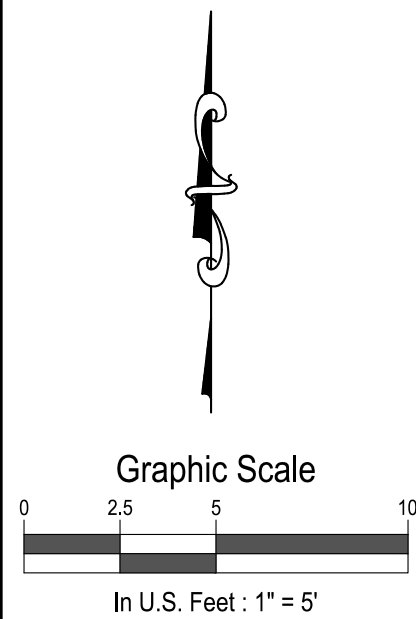
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718-724 Lincoln  
Condominium Map  
718 Lincoln Avenue

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718-724 Lincoln Conmdominium Map  
Lots 4, 5 & 6, Weaver Addition to the Town of Carbondale  
Section 34, T.7S., R.88W. of the 6th P.M.  
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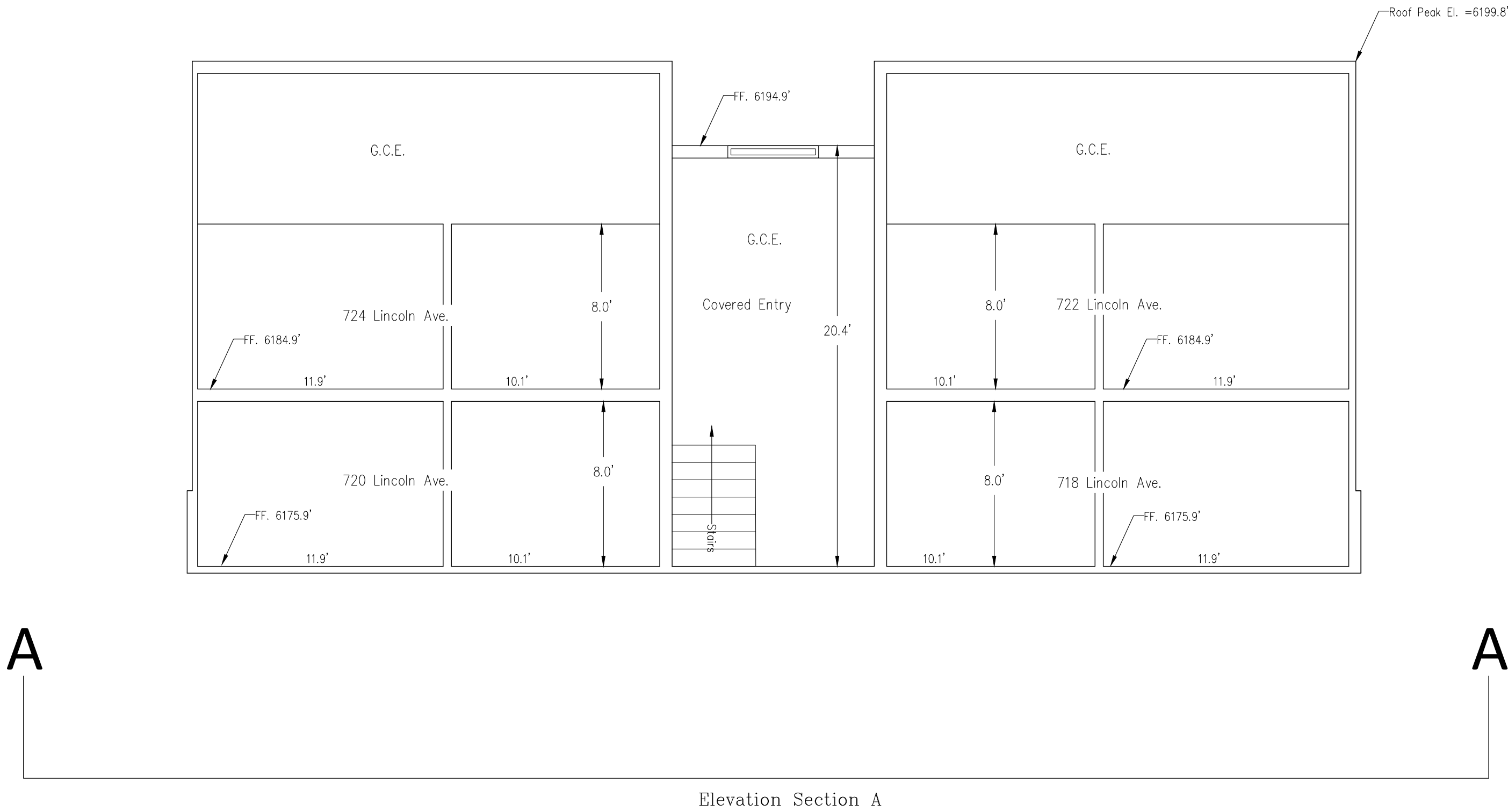
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Condominium Map  
718 Lincoln Avenue

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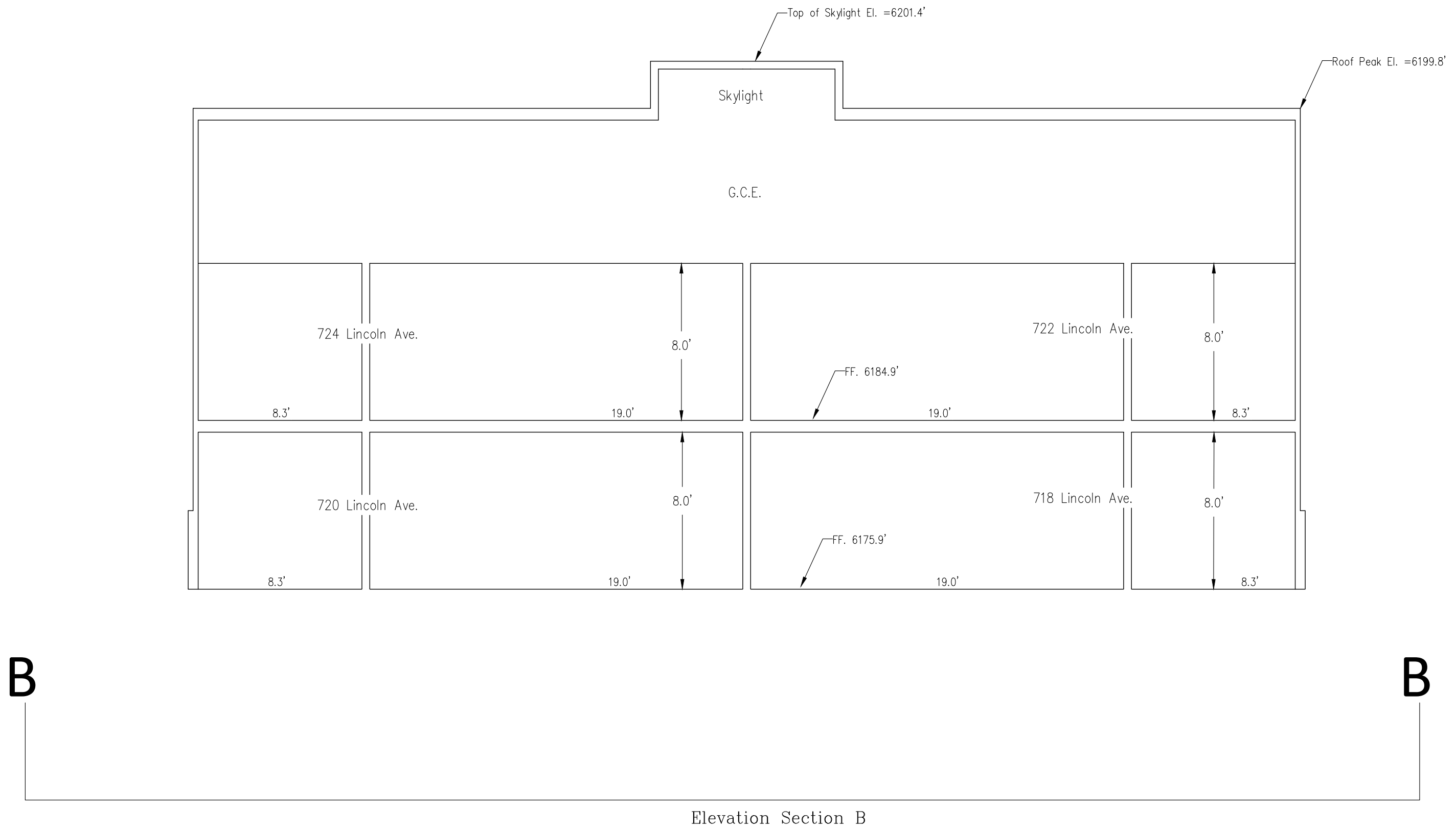
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Elevation Section A



B

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Elevation Section B

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**CONDOMINIUM DECLARATION  
FOR THE  
718 LINCOLN CONDOMINIUM ASSOCIATION**

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**CONDOMINIUM DECLARATION**  
**FOR THE**  
**718 LINCOLN CONDOMINIUM ASSOCIATION**

THIS CONDOMINIUM DECLARATION FOR THE 718 LINCOLN CONDOMINIUM ASSOCIATION (the "Declaration") dated February \_\_\_\_, 2019, shall be effective upon recordation and is made by Carlo Angelini ("Declarant"). Declarant is the owner of certain real property in Garfield County, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

**ARTICLE 1 IMPOSITION OF COVENANTS**

Section 1.1. Purpose. The purpose of this Declaration is to create a condominium project known as 718 Lincoln Condominiums (the "Project") by submitting the Property to the condominium form of ownership and use pursuant to the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act"), to elect to have the Property treated as a common interest community and thereby subject the Project to the provisions of the Act and not to the general common law of tenancy-in-common, and to establish a uniform plan for the development, sale and ownership of Units.

Section 1.2. Intention of Declarant. Declarant desires to protect the value and desirability of the Project, to further a plan for the improvement, sale and ownership of the Units in the Project, to create a harmonious and attractive development and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners.

Section 1.3. Condominium Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, common areas and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be owned, held, sold, conveyed, encumbered, leased, rented, occupied, maintained, and improved subject to the provisions of this Declaration.

Section 1.4. Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

## ARTICLE 2 DEFINITIONS

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

Section 2.1. "Act" means the Colorado Common Interest Ownership Act as defined in ARTICLE 1 hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2. "Additional Improvements" Means any improvements made to the Property by the Association.

Section 2.3. "Additional Reserved Rights" has the meaning set forth in Section 14.2.

Section 2.4. "Agency" means any agency or corporation such as Housing and Urban Development (HUD), Department of Veteran's Affairs ("VA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") that purchases, insures or guarantees residential mortgages.

Section 2.5. "Allocated Interests" means the undivided interest in the Common Elements, the Common Expense Liability, and the votes in the Association allocated to each of the Units in the Project. The formulae used to establish the Allocated Interests are described in ARTICLE 4.

Section 2.6. "Applicable Laws" means federal, state and local laws affecting the Property.

Section 2.7. "Articles of Incorporation" means the Articles of Incorporation of the 718 Lincoln Condominium Association, Inc. filed with the Colorado Secretary of State, as amended from time to time.

Section 2.8. "Assessments" means the annual, special and Default Assessments levied Pursuant to this Declaration.

Section 2.9. "Association" means the 718 Lincoln Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.10. "Board of Directors" or "Board" means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association, and defined as the "executive board" in the Act.

Section 2.11. "Budget" means the annual budget of the projected revenues, expenditures (both ordinary and capital) and reserves for the Association and for each District.

Section 2.12. "Bylaws" means the bylaws adopted by the Association, as amended from time to time.

Section 2.13. "Common Elements" means all portions of the Project excluding the Units, and consisting of General Common Elements, Parking Common Elements and Limited Common Elements. The General Common Elements shall be owned by the Owners, each Unit being allocated an undivided interest in the Common Elements as allocated pursuant to ARTICLE 4.

Section 2.14. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association and consisting of General Common Expenses, Garage Common Expenses and Limited Common Expenses.

Section 2.15. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.16. "Condominium Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Map, and any Rules and Regulations, and any other Documents or provisions adopted under such documents by the Association or the Board of Directors.

Section 2.17. "Costs of Enforcement" means all monetary fees, late charges, interest, expenses, costs, including receiver's and appraiser's fees, collection agency fees, and reasonable attorneys' fees and disbursements, including legal assistants' fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Condominium Documents.

Section 2.18. "County" means the County of Garfield, Colorado.

Section 2.19. "Declarant" means Carlo Angelini his successors and assigns as the same may be specified in a recorded instrument specifically describing those rights of Declarant transferred to a successor or assignee.

Section 2.20. "Declaration" means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated that is executed by Declarant and recorded in the Records. The term Declaration includes the Map, any certificate of completion (as defined in the Act) that is separate from the Map, and all amendments and supplements to this Declaration, the Map, and any separate certificate of completion without specific reference thereto.

Section 2.21. "Deed" means each initial deed recorded after the date hereof by which Declarant conveys a Unit and, after the initial sale by Declarant, any deed or other instrument by which an Owner transfers title to a Unit (expressly excluding an instrument creating a Security Interest).

Section 2.22. "Default Assessment" means an Assessment levied pursuant to this Declaration in connection with an unpaid amount for which an Owner is responsible including, without limitation, for Costs of Enforcement, overdue amounts charged by the Association to an Owner, liability for negligence and indemnification obligations.

Section 2.23. "Eligible First Mortgagee" means a First Mortgagee that has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive the notices provided for in ARTICLE 19 entitled "Mortgagee Protections."

Section 2.24. "Fine" means a monetary penalty imposed by the Association against an Owner for violating terms, conditions, or provisions of the Condominium Documents. Interest on overdue amounts, late charges, other Costs of Enforcement and Default Assessments (other than any portion thereof which is designated as a Fine) are expressly excluded from the definition of, and shall not be deemed to be, Fines.



Section 2.25. "First Mortgagee" means a holder of a Security Interest in a Unit which has priority over all other Security Interests in the Unit.

Section 2.26. "Parking Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association pertaining to the Parking Common Elements, together with any allocations to reserves for the Parking Common Elements.

Section 2.27. "General Common Elements" means those portions of the Project, other than the Units and the Limited Common Elements but including, without limiting the generality of the foregoing, the following components:

- (a) The Property;
- (b) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, landscaping, gardens, and any amenities and related facilities located upon the Property that are not Units or within Units;
- (c) in general, all other parts of the Project designated by Declarant as General Common Elements and existing for the use of one or more of the Owners as shown on the Map, including, without limitation, access to public streets; and

The General Common Elements shall be owned by the Owners, each Unit being allocated an undivided interest in the General Common Elements as allocated pursuant to ARTICLE 4.

Section 2.28. "General Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association not included as a District Common Expense but pertaining to the General Common Elements, together with any allocations to reserves for the General Common Elements, including, without limiting the generality of the foregoing, the following items:

- (a) expenses of administration, insurance, operation, and management, repair or replacement of the General Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as provided in this Declaration;
- (b) expenses identified as General Common Expenses by the provisions of this Declaration or the Bylaws;
- (c) expenses agreed upon as General Common Expenses by the members of the Association; and

Section 2.29. "Improvement(s)" means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located, together with landscaping and hardscaping located on the Property.

Section 2.30. "Limited Common Elements" means those parts of the Common Elements that are limited to and reserved for use in connection with one or more, but fewer than all, of the Units. AS an example, the Limited Common Elements shall include any balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, entryways, stoops, porch, balcony or patio designated or designed to serve a single Unit but located outside the Unit's boundaries, or parking spaces located outside of the Units and designated as "Limited

Common Elements" or "LCE" in this Declaration or on the Map, if any. If any chute, flue or duct lies partially within and partially outside the designated boundaries of a Unit, any portion thereof outside of the Unit but serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Owners, except by invitation and except as otherwise set forth in ARTICLE 13. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Section 2.31. "Majority of Owners" means a majority of the Total Voting Power (rather than a majority of those present or voting by proxy at a meeting or the majority of a quorum).

Section 2.32. "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors of the Association relative to the operation, maintenance, and management of the Project.

Section 2.33. "Managing Agent" means a person, firm, corporation or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.34. "Map" or otherwise known as a "plat," means that part of this Declaration that depicts all or any portion of the Project in three dimensions, is executed by Declarant and is recorded in the Records.

Section 2.35. "Nonprofit Act" means the Colorado Revised Nonprofit Corporation Act, Articles 121-137, Title 7, Colorado Revised Statutes, as may be amended and supplemented from time to time.

Section 2.36. "Occupant" means any member of an Owner's family or an Owner's guests, invitees, servants, tenants, employees, or licensees who occupy a Unit or are on the Common Elements for any period of time.

Section 2.37. "Owner" means Declarant or any other Person who owns record title to a Unit (including a contract seller but excluding a contract purchaser) but excluding any Person having a Security Interest in a Unit unless such Person has acquired record title to the Unit pursuant to foreclosure or other proceedings or by conveyance in lieu of foreclosure.

Section 2.38. "Party Wall" means any common wall adjoining two (2) or more Units and shall be deemed to include the footings underlying, the roof underlying the portion of the roof over, and the utility lines within, a common wall.

Section 2.39. "Period of Declarant Control" means the maximum period of time defined and limited by the Act and Section 7.5 of this Declaration during which Declarant may, at its option, control the Association.

Section 2.40. "Person" means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or other legal entity or any combination thereof.

Section 2.41. "Project" has the meaning set forth in Section 1.1 hereof.

Section 2.42. "Property" means the real property described in the attached Exhibit A.

Section 2.43. "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

Section 2.44. "Records" means the Office of the Clerk and Recorder in every county in which any portion of the Project is located.

Section 2.45. "Reserved Declarant Rights" means all rights reserved by Declarant in this Declaration, including, without limiting the generality of the foregoing, those rights reserved to Declarant in ARTICLE 14 and ARTICLE 15 hereof.

Section 2.46. "Rules and Regulations" means the rules and regulations promulgated by the Association for the management, preservation, safety, control, and orderly operation of the Project in order to effectuate the intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time. Without limiting the generality of the foregoing, the phrase Rules and Regulations as used in the Condominium Documents shall not be limited to the provisions of the document(s) entitled Rules and Regulations but instead shall include all policies, procedures, rules, regulations, and/or guidelines as the same may be adopted or amended from time to time by the Board of Directors and shall expressly include, without limitation, any corporate governance policies, and/or any architectural control guidelines.

Section 2.47. "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an 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 an Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of the obligation secured by a Security Interest. '

Section 2.48. "Special Declarant Rights" has the meaning set forth in Section 14.1 hereof.

Section 2.49. "Total Voting Power" means the aggregate number of votes of the members of the Association that are eligible and entitled to vote on or consent to or reject the decision or action in question.

Section 2.50. "Unit" means a physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined by this Declaration and depicted on the Map.

(a) "Perimeter Wall" means the wooden, metal, or similar structural materials which constitute the exterior face of a wall of a Free Market Unit.

(b) A Unit shall include any lath, furring, wallboard, plasterboard, plaster, drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, facing brick, tile, fixtures and hardware, all improvements contained within the area bounded by the Unfinished Perimeter Walls (or Perimeter Walls and Party Walls, as applicable), Unfinished Ceilings, and Unfinished Floors, and any heating and refrigerating elements or related equipment, utility lines and outlets, telecommunications lines, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, communications, or other utility services solely to such Unit and located within the Unfinished Perimeter Walls (or Perimeter Walls and Party Walls, as applicable), Unfinished Ceilings, and Unfinished Floors; provided, however, that such Unit shall not include any of the structural components of the Improvements or any elements, equipment, lines, pipes, fixtures or equipment which are located within such Unit or within a Party Wall but which serve Common Elements or more than one Unit. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Project as more specifically set forth on Exhibit B.

### **ARTICLE 3. DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP**

Section 3.1. Division Into Units. The Property is hereby and hereafter divided into those Units identified on Exhibit B. The undivided interests in the Common Elements, including the District Common Elements, as allocated in Exhibit B, are hereby declared to be appurtenant to the respective Units.

Section 3.2. Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Map, and those numbers are set forth in Exhibit B.

Section 3.3. Inseparability of Unit. No part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration; (b) each Unit and its appurtenances shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit; and (c) every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with the undivided interests in the Common Elements, and all appurtenant rights and interests created by Applicable Law or by this Declaration, including the Owner's membership in the Association. Notwithstanding the foregoing provisions of this Section, nothing herein shall prevent or limit Declarant's exercise of, enjoyment of, or ability to exercise any Reserved Declarant Rights.

Section 3.4. Non-Partitionability of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any action for partition or division of the Common Elements. By acceptance of a Deed or other instrument of conveyance or assignment to a Unit, each Owner shall be deemed to have specifically waived such Owner's right, if any, to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. In addition to all other remedies of the Association, any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action. Notwithstanding anything to the contrary set forth herein, nothing in this Section shall limit Declarant's exercise of, enjoyment of, or ability to exercise any Reserved Declarant Rights.

Section 3.5. Subdivision of Units; Relocation of Boundaries Between Adjoining Units. No Unit may be subdivided and the boundaries between Units may not be altered at any time.

#### **ARTICLE 4 ALLOCATED INTERESTS**

Section 4.1. Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B.

Section 4.2. Formulae for the Allocation of Interests. The interests allocated to each Unit have been calculated by the following formulae and are shown on Exhibit B.

(a) Undivided Interest in the General Common Elements. The percentage of the undivided interest in the General Common Elements shall be allocated among all Units equally.

(b) General Common Expense Liability. The General Common Expense Liability shall be allocated among all Units equally.

(c) Votes. Each Unit shall be allocated a vote in the same matter as allocations of undivided interests in the General Common Elements.

Section 4.3. Rounding Convention. The total of all Allocated Interests shall be deemed to equal to one hundred percent (100%) for purposes of this Declaration.

#### **ARTICLE 5 CONDOMINIUM MAP**

The Map shall be filed in the Records. Any Map filed subsequent to the initial Map shall be termed a supplement to the initial Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed following substantial completion of the Improvement(s) depicted on the Map and prior to the conveyance of any Unit depicted on the Map to a purchaser. The Map shall satisfy the provisions of Section 38-33.3-209 of the Act and of Section 38-51-106, Colorado Revised Statutes.

#### **ARTICLE 6 LEGAL DESCRIPTION AND TAXATION OF UNITS**

Section 6.1. Contracts to Convey and Conveyances Subsequent to Recording of Declaration and Map. Subsequent to the recording of this Declaration and the Map, contracts to convey, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to confirm the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

Unit\_\_\_\_\_, according to the Condominium Declaration for 718 Lincoln Condominiums, recorded February \_\_\_, 2019, at (Reception No. \_\_\_\_\_ and the Condominium Map recorded \_\_\_\_\_, 2019, at (Reception No. \_\_\_\_\_ in the office of the Clerk and Recorder of Garfield County, Colorado.

Section 6.2. Conveyance Deemed to Include an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which legally describes the Unit substantially in the manner set forth above shall be construed to include the Unit, together with the undivided interest in the Common Elements appurtenant to such Unit.

Section 6.3. Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, Declarant shall deliver a copy of this Declaration to the assessor of each county specified in the Records as provided by law. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit, including, without limitation, the Common Elements appurtenant to any other Unit.

## **ARTICLE 7 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 7.1. Association Membership. The Articles of Incorporation shall be filed no later than the date Declarant delivers the first Deed conveying a Unit in the Project. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Unit. No Owner, whether one or more Persons, shall have more than one membership per Unit owned, but all the Persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one Person, such Persons shall appoint and authorize one Person or alternate Persons to represent the Owners of the Unit pursuant to the Bylaws, and there shall be a single registered address for each Unit, as applicable, for notice and delivery purposes.

Section 7.2. Voting Rights and Meetings. Each Unit in the Project shall have the votes allocated in accordance with Section 4.2; provided, however, no vote allocated to a Unit owned by the Association may be cast. Cumulative voting shall not be allowed in the election of the Board of Directors or for any other purpose. The voting power required for any action or determination shall be calculated in accordance with the Bylaws. A meeting of the Association shall be held at least once each year, and special meetings of the Association may be called in accordance with the Bylaws.

Section 7.3. Meeting to Approve Annual Budget. Prior to the first annual meeting of the Association, and thereafter at the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to review the Budget proposed by the Board of Directors. Only the members of the Board of Directors will be entitled to vote to approve the Budgets. If for any reason the Owners are unable to elect the members of the Board of Directors, then the remaining members of the Board of Directors will be authorized to approve the Budget. A summary of the proposed Budgets approved by the Board of Directors shall be delivered to the Owners within ninety (90) days after approval by the Board of Directors along with a notice of a meeting of the Association to be held not fewer than ten (10) nor more than fifty (50) days after delivery of the summary to the Owners. Unless at the meeting at least seventy-five percent (75%) of the Total Voting Power reject the proposed Budgets, as applicable, such Budget shall be deemed ratified whether or not a quorum is present at the meeting. In the event a proposed Budget is rejected, the then existing Budget shall continue in effect until such time as a subsequent Budget is proposed by the Board of Directors and is not rejected in accordance with the above procedures.

Section 7.4. Transfer Information. All Persons who acquire Unit(s) other than from Declarant shall provide written notice of the transfer, together with all information required under the Bylaws and/or the Rules and Regulations, to the Association within ten (10) days after the date of transfer. Such Person shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is reasonably acceptable

to the Association. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 7.5. Declarant Control of the Association. There shall be a Period of Declarant Control of the Association, during which Declarant, or Persons designated by Declarant, may appoint and remove the officers of the Association and the members of the Board of Directors. The Period of Declarant Control shall commence upon filing of the Articles of Incorporation and shall terminate sixty (60) days after Declarant's conveyance of seventy-five percent (75%) the Units to Unit Owners other than Declarant.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before the termination of the Period of Declarant Control, but in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 7.6. Required Election of Owners. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created by Declarant to Owners other than Declarant, at least one (1) member and not fewer than twenty-five percent (25%) of the members of the Board of Directors shall 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 by Declarant to Owners other than Declarant, not fewer than fifty percent (50%) of the members of the Board of Directors must be elected by Owners other than Declarant. For the avoidance of doubt, the foregoing restrictions on Declarant are not intended to restrict the Declarant, to the extent it then owns one or more Units, from voting or from running for the Board of Directors as a Unit Owner. Not later than the termination of the Period of Declarant Control, the Owners shall elect all members of the Board of Directors, at least a majority of whom shall be Owners other than Declarant or Designated Representatives of Owners other than Declarant.

The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election. Each member of the Board of Directors shall serve for the term specified in the Bylaws and may be removed only in accordance with the Bylaws.

Section 7.7. Requirements for Turnover of Declarant Control. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Board of Directors, Declarant shall deliver to the Association (a) all property of the Owners and of the Association held by or controlled by Declarant, and (b) the documents, information, funds and other items required by Section 38-33.3-303(9) of the Act, as further specified in the Bylaws (to the extent they are in Declarant's possession or control).

## **ARTICLE 8 ASSOCIATION POWERS AND DUTIES**

Section 8.1. Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements. The Association shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of

such management, operation, maintenance, and repair by the Association shall be paid from the Assessments, and prior approval of the Owners shall not be required for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be maintained, repaired and/or replaced on a periodic basis. The Association shall adopt and amend, annually and in accordance with the provisions hereof, a Budget which will be the basis for collection of Assessments from Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement to provide statements of status of Assessments, as described in Section 9.12. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents and requesting First Mortgagees, all in accordance with the Condominium Documents.

Section 8.2. Association Powers. The Association shall have, subject to the limitations contained in this Declaration, the Bylaws, and the Act, all powers necessary or appropriate for the administration of the affairs of the Association and the upkeep of the Project, which shall include, but not be limited to, the following:

- (a) Adopt and amend the Bylaws and the Rules and Regulations;
- (b) Adopt and amend the Budgets;
- (c) Collect Assessments from Owners;
- (d) Suspend the voting interests allocated to a Unit, and the right of an Owner to cast such votes, or by proxy the votes of another, during any period in which such Owner is in default in the payment of any Assessment, or during any time in which an Owner is in violation of any other provision of the Condominium Documents;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Condominium Documents in the Association's name, on behalf of the Association or on behalf of two or more Owners in matters affecting the Project;
- (g) Adjust and settle insurance claims;
- (h) Receive notices, join in any litigation or administrative proceeding, and execute any and all documents in the Association's name, on behalf of the Association, or on behalf of the two or more Owners, in connection with any change in zoning, annexation, subdivision approval, building permit, or other type of governmental approval required to accomplish or maintain the purposes of the Association;
- (i) Make contracts and incur liabilities;
- (j) Regulate the use, maintenance, repair, replacement, and modification of all Common Elements (expressly including the Limited Common Elements), all Association property within the Project or any property which serves the Project but which is outside its boundaries;
- (k) Establish policies and procedures for entry into Units under authority granted to the Association in the Condominium Documents for the purpose of cleaning, maintenance and



repair (including emergency repair) and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity;

- (l) Cause additional improvements to be made as a part of the Common Elements;
- (m) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property (provided that Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 38-33.3-312 of the Act);
- (n) Grant easements, including permanent easements, and grant leases, licenses and concessions, through or over the Common Elements;
- (o) Impose and receive a payment, fee, or charge for (i) services provided to Owners, and (ii) for the use, rental or operation of the Common Elements (other than for the use or rental of the Limited Common Elements);
- (p) Establish from time to time, and thereafter impose, charges for late payment of Assessments or any other sums due and, after notice and hearing, levy a Fine for a violation of the Condominium Documents;
- (q) Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments and for services provided to Owners;
- (r) Recover Costs of Enforcement for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated;
- (s) Exercise any other power necessary or proper for the governance and operation of the Association.

Section 8.3. Board of Directors Meetings. All meetings of the Board of Directors at which action is to be taken by vote, will be open to the Owners, and agendas for meetings of the Board of Directors shall be made reasonably available for examination by all members of the Association or their representatives except as set forth in the Bylaws.

Section 8.4. Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "notice and hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, a Managing Agent, etc.) shall give notice of the proposed action to all Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be given not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally and/or in writing, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within

ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

## **ARTICLE 9 ASSESSMENTS**

Section 9.1. Commencement of Annual Assessments. Until the Association makes an Assessment for Common Expenses, Declarant shall pay all Common Expenses. Once the Association makes an Assessment for a portion of the Common Expenses, the Owners and Units to which the applicable Common Elements are appurtenant shall be responsible for Assessments of such Common Expenses and the Declarant shall continue to pay any remaining Common Expenses until the Association makes an Assessment for such remaining Common Expenses. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on the Budget.

Section 9.2. Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit pursuant to this Declaration. The total annual Assessments shall be based upon the Budget. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and after any prepayment of or provision for reserves, as determined by the Board of Directors, shall be refunded to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future Assessments for Common Expenses, as determined by the Board of Directors in its discretion.

Section 9.3. Apportionment of Annual Assessments. The total annual Assessments for any fiscal year of the Association shall be assessed to the Units in proportion to their percentage of Common Expense Liability as allocated pursuant to Section 4.2, subject to: (a) Common Expenses which are separately metered or assessed to the Units by third parties or pursuant to service agreements with third parties; (b) General Common Expenses shall be assessed against each Unit as set forth on Exhibit B; (c) Common Expenses associated with the operation, maintenance, repair or replacement of Limited Common Elements, which shall be assessed equally or on such other equitable basis as the Board of Directors shall determine to the Units to which the specific Limited Common Elements are appurtenant; (d) Common Expenses or portions thereof benefiting fewer than all of the Units which shall be assessed exclusively against the Units benefited, and Common Expenses or portions thereof which benefit certain Units more than others which shall be allocated in proportion to such benefit; (g) any increased cost of insurance based upon risk which shall be assessed to Units in proportion to the risk; (h) any Common Expense caused by the misconduct of any Owner(s) or their Occupants, which may be assessed exclusively or on such other equitable basis as the Board of Directors shall determine against such Owner(s); and (i) any expenses which are otherwise charged equally to the Units. All such allocations of Common Expense Liability to the Units on a basis other than the Units' percentage of Common Expense liability shall be determined by the Board of Directors.

Section 9.4. Special Assessments. In addition to the annual Assessments authorized above, the Board of Directors may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project, specifically including any fixtures and personal

property related to it and any other unbudgeted or unanticipated costs of the Association. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Units pursuant to the provisions in Section 7.3, Section 9.2 and Section 9.3 above.

Section 9.5. Due Dates for Assessment Payments. Unless otherwise determined by the Board of Directors, the Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Board of Directors may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the date and in the installments determined by the Board of Directors, as set forth in the Rules and Regulations. The Board of Directors may establish different installments for different types of Units or for Owners of multiple Units of any type. If any such installment shall not be paid when due and payable, then the Board of Directors may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by Section 38-33.3-315 of the Act or other Applicable Law), fee, or such other charge as the Board of Directors may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of the applicable payment period. However, if the Common Expense Liability is re-allocated in accordance with this Declaration, any installment(s) of an Assessment not yet due shall be recalculated to reflect the re-allocated Common Expense Liability.

Section 9.6. Default Assessments. All Costs of Enforcement assessed against an Owner pursuant to the Condominium Documents, any Fines, and any expense of the Association which is the obligation of an Owner pursuant to the Condominium Documents and is not paid when due shall become a Default Assessment assessed against the Owner's Unit.

Section 9.7. Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Owners, by acceptance of the Deed or other instrument of transfer of such Owner's Unit (whether or not it shall be so expressed in such Deed or other instrument of transfer), are deemed to personally covenant and agree with all other Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) Default Assessments applicable to the Owner's Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities located on or in the Common Elements or by abandoning or leasing such Owner's Unit.

Section 9.8. Lien for Assessments; Assignment of Rents. All Assessments (including installments of the Assessments) arising under the provisions of the Condominium Documents shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association may prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Rules and Regulations, the name of the Owner or Owners, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any

Assessment is levied. Upon any default in the payment of any Assessments, the Association shall also have the right to appoint a receiver to collect all rents, profits, or other income from the Unit payable to the Owner and to apply all such rents, profits, and income to the payment of delinquent Assessments. Each Owner, by ownership of a Unit, agrees to the assignment of such rents, profits and income to the Association effective immediately upon any default in the payment of annual, special, or Default Assessments.

Section 9.9. Remedies for Nonpayment of Assessments. If any Assessment (or any installment of the Assessment) is not fully paid when due, then as often as the same may happen, default interest, late charges, and Costs of Enforcement will accrue as set forth in the Rules and Regulations. In addition, if any Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (a) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (b) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, (c) the Association may proceed to foreclose its lien pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Colorado law for foreclosure of real estate mortgages, (d) the Association may suspend the Owner's right to vote in Association matters until the Assessment is paid, and (e) the Association may pursue any other remedies available pursuant to the Condominium Documents or Applicable Law. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 9.10. Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments on a Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all purchasers of a Unit shall be liable with the prior Owner(s) of such Unit for any and all unpaid Assessments against such Unit, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Owner. For Assessment purposes, the date a purchaser becomes the Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Owner of the Unit upon the execution and delivery of the deed or other instruments conveying or transferring title to the Unit, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by Deed, a purchaser shall be deemed to become the Owner upon the execution and delivery of the Deed or other instruments conveying or transferring title of the Unit, irrespective of the date the Deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid

Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

Section 9.11. Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the Deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;
- (b) the lien of any First Mortgagee except to the extent the Act grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a First Mortgagee or by virtue of a Deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Unit which accrue prior to the time such First Mortgagee acquires title to the Unit except to the extent the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense and except to the extent the Act grants lien priority for Assessments to the Association. All other Persons not holding liens described in this Section and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

The sale or other transfer of any Unit shall not affect the Association's lien on such Unit for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof except (a) as provided above with respect to First Mortgagees, (b) in the case of foreclosure of any lien enumerated in this Section, and (c) as provided in the next Section. Further, no such sale or transfer shall relieve the purchaser of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 9.12. Statement of Status of Assessments. Within fourteen (14) calendar days after receipt of written notice to the Managing Agent or, in the absence of a Managing Agent, to the Board of Directors and payment of a reasonable fee set from time to time by the Board of Directors as set forth in the Rules and Regulations, any Owner, holder of a Security Interest, prospective purchaser of a Unit or their designees shall be furnished a statement of the Owner's account setting forth:

- (a) the amount of any unpaid Assessments then existing against a particular Unit;
- (b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

(c) the date(s) for payment of any installments of any special Assessments outstanding against the Unit; and

(d) any other information, deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Directors, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the Person or Persons to whom such certificate is addressed and who rely on the certificate in good faith.

Section 9.13. Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law, and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Owner in the Common Elements (except a Security Interest in the Common Elements that may be granted by the Association pursuant to the requirements of the Act).

## **ARTICLE 10 MAINTENANCE RESPONSIBILITY**

### **Section 10.1. Rights and Duties of Owners.**

(a) Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial purchasers of the Units, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries.

(b) The Owner of any Unit shall, at the Owner's expense, maintain and keep in repair all fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit. An Owner shall not allow any action or work that will impair the structural soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, plumbing systems, or other building systems or Common Elements (expressly including the Limited Common Elements) or the integrity of the Improvement(s), or impair any easement or hereditament. Without limiting the generality of the foregoing, with respect to any utility line, cable, conduit, pipe or similar improvement serving a Unit, the Owner shall be responsible for its maintenance and repair from the point at which the improvement meets the boundary of the Unit (or if greater, the boundary of the Limited Common Elements appurtenant to and accessible only from the Unit) and the Association shall be responsible for such maintenance and repair where such improvements run on or under the Common Elements to such point. These clarifying provisions are not intended to and shall not be deemed to expand or alter the obligations of Owners or the Association, as applicable, with respect to utility providers or other service providers, or the rights of the Association with respect to the Common Elements (expressly including the Limited Common Elements). Each Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors of any Limited Common Element balcony, deck

or patio and of any other Limited Common Elements appurtenant to and accessible only from the Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition, provided that the Association (a) shall be responsible for all structural repairs, replacements, and non-routine maintenance and repairs (such as painting), (b) may choose to maintain all or any portion of the Limited Common Elements for reasons of uniformity, aesthetics or structural considerations, and (c) may impose standards for maintenance and aesthetics applicable to such Limited Common Elements through the Rules and Regulations. Owners' rights and maintenance obligations relative to any Limited Common Elements shall also be subject to any more specific Rules and Regulations relating to such Common Elements.

Section 10.2. Owner's Negligence. Except as expressly provided in ARTICLE 16, regarding insurance, in the event that the need for maintenance, repair, or replacement of all or any portion of the Project is caused through or by the negligent or willful act or omission of an Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner, and such expenses shall automatically become a Default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 10.3. Party Walls.

(a) The cost of maintenance, repair, alteration, improvement and replacement of each Party Wall shall be shared equally by the Owners of the Units adjoining such Party Wall. The right of an Owner to contribution from another Owner pursuant to this Declaration or the Act, shall be appurtenant to the land and such rights and obligations shall pass to the Units Owners' successors in title. No Owner shall alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when erected. In the event of damage or destruction of a Party Wall from any cause other than the negligence or willful misconduct of an Owner, then the Owners of the Units sharing such Party Wall shall bear equally the expense to repair or rebuild said wall to its previous condition. If an Owner's negligence or willful misconduct shall cause damage to or destruction of the Party Wall, such negligent party shall be responsible for repairing or reconstructing the Party Wall and shall bear the cost of the repair and reconstruction to the extent such Owner's negligence caused such damage, subject to the provisions of ARTICLE 17.

(b) The Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring sewage, water, utilities and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural tolerance of the Party Wall.

## **ARTICLE 11 MECHANICS' LIENS**

Section 11.1. Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner or the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein attendant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Owner's Unit, against the Unit of another Owner or against the Common Elements, or any part thereof.

Section 11.2. Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the indemnity provided by the provisions of this ARTICLE 11 by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Owner under the provisions of this ARTICLE 11, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

## **ARTICLE 12 USE RESTRICTIONS**

Section 12.1. Use and Occupancy of Units. Except for uses reserved to Declarant in ARTICLE 14 entitled "Special Declarant Rights and Additional Reserved Rights," all Units shall be used for dwelling purposes only. Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit, subject to the rights of the Declarant and the Association provided in this Declaration. Each Unit shall be used and occupied only as a residence as a single housekeeping unit, operating on a nonprofit, noncommercial basis with a common kitchen and dining area and for home operated businesses, so long as such business is (i) allowed by zoning resolutions; (ii) is not apparent or detectable by sight, sound, or smell from the exterior of the Unit, (iii) does not increase traffic within the Project; and (iv) does not increase the insurance obligation or premium of the Association. Uses described as "day care" or "child care" facilities (whether licensed or unlicensed") are expressly prohibited in Units.

Section 12.2. Leasing and Occupancy of Units. Except as otherwise restricted herein or in the Rules and Regulations, an Owner may rent or lease such Unit(s) to others for residential purposes and may otherwise use its Unit(s) for any residential purpose that does not cause unreasonable disturbance to other Owners and which are permitted by the Condominium Documents and Applicable Law.

Section 12.3. Compliance with Laws, Ordinances, and Association Documents. No Unit shall be used for any purpose not permitted by the zoning ordinances of the City of Carbondale, this Declaration, or not in compliance with any local, state or federal law, statute or other ordinance, regulation or rule.



Section 12.4. Use of Common Elements. Except as may be permitted in the Limited Common Elements pursuant to the Condominium Documents, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Board of Directors. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Board of Directors. Owners and Occupants shall not disturb, damage, or have access to, certain restricted access areas in the Common Elements such as those specified in Section 13.1 and any other areas so designated on the Map or in the Rules and Regulations.

Section 12.5. Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Board of Directors. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any Applicable Law. No damage to or waste of the Common Elements shall be committed by any Owner or Occupant, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or an Occupant of such Owner's Unit (including all Costs of Enforcement incurred in the defense of claims arising by reason of this Section or incurred in establishing the right to indemnification). Failure to so indemnify shall be a default by such Owner under this Section and shall give rise to a Default Assessment against such Owner's Unit. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the foregoing indemnity as a Default Assessment levied against such Unit.

Section 12.6. Structural Alterations and Exterior Appearance. No structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of the Unit or to any Common Element and, except if and to the extent expressly required to be permitted under the Act, no window coverings or other improvements, alterations or decorations visible from outside a Unit shall be made or caused to be made by any Unit Owner without the prior written approval of Declarant during the Period of Declarant Control and, thereafter, the Board of Directors. The Association may promulgate Rules and Regulations establishing procedures for the approvals required by this Section 12.6. Such Rules and Regulations may include, but may not be limited to, requirements that the Owner submit (a) plans and specifications showing the nature, kind, shape, height, color, materials, and location of the proposed alterations in sufficient detail for the Association and Declarant to review them; and (b) processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. Unit Owners shall be responsible for ensuring that all alterations comply with the Condominium Documents and with all Applicable Laws and that all necessary approvals are obtained from governmental authorities. No approval given by Declarant or the Association shall be deemed to imply that Declarant or the Association has reviewed any applicable requirements or the requesting Owner's compliance therewith. Without limiting the generality of the foregoing, alteration of a Limited Common Element appurtenant to a Unit may be further restricted pursuant to the Rules and Regulations.

Section 12.7. Pet and Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Owners, nor shall any fire hazard, safety hazard, or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or unreasonably offensive to others. The Association may adopt additional restrictions regarding pets in the Rules and Regulations or in a separate pet policy.

Section 12.8. Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected, or maintained for any purpose whatsoever except such signs as have been approved by Declarant during the Period of Declarant Control and, thereafter, the Board of Directors, except those expressly required to be permitted under the Act (such as certain flags and political signs), if any. Such approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Board of Directors. Any signs which are permitted under the foregoing restrictions shall be erected or maintained only if and to the extent they are in compliance with all Applicable Laws.

Section 12.9. Restrictions on Use of Parking and Storage Areas. Unless written permission is granted by the Board of Directors, (a) no parking shall be permitted at any location on the Common Elements unless specifically designated for parking by the Association, or in a location designated as a Limited Common Element appurtenant to a specific Unit, and (b) no storage is permitted outside of Units except in storage areas, if any, specifically designated by the Association. No Owner may use any parking or storage space assigned to another without permission of the Owner to whom the parking or storage space is assigned. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other Owner's parking or storage rights or that constitutes a safety hazard. Without limiting the generality of the powers of the Association with respect to parking or storage, the Association may promulgate Rules and Regulations governing parking and storage, and the Association is specifically authorized, but not obligated, to (i) remove any abandoned or inoperable vehicle, any vehicle parked in any area not designated for parking, any prohibited type of vehicle, any vehicle parked in any space that is assigned to another Person or reserved for a specific use, or any vehicle parked in an obstructing or hazardous manner, except if and to the extent such parking of such vehicle is expressly required to be permitted under the Act, and (ii) remove any improperly stored or hazardous materials, in all cases at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount within seven (7) days after notice to the Owner of the amount owed, then the failure to pay shall be a default by the Owner and such expenses shall automatically become a Default Assessment determined and levied against such Unit enforceable by the Association as provided in this Declaration. Notwithstanding the foregoing provisions of this Section, Declarant reserves for itself and its agents and designees an easement to go across and to use, and nothing herein shall be construed to prevent Declarant's and its agents' and designees' use of, parking spaces or Common Elements to park vehicles and equipment necessary or desirable for the development and construction of improvements within the Property and/or to park vehicles in parking spaces (including spaces assigned as Limited

Common Elements (if any) when unoccupied) for other purposes during the period of Declarant's reserved Development Rights.

Section 12.10. No Limitation on Reserved Declarant Rights. Nothing set forth in this Section 12.10 shall interfere with the Reserved Declarant Rights or with Declarant's right or ability to exercise its rights reserved hereunder, including the Reserved Declarant Rights.

## **ARTICLE 13 EASEMENTS**

Section 13.1. Easement of Enjoyment; Common Elements. Every Owner shall have a perpetual non-exclusive right and easement for the use and enjoyment of, and for access over, across, and upon, any portion of the Common Elements designated for common use, which includes the benefit of a non-exclusive easement of access over, across and upon the Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and, where appropriate, vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

- (a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Map;
- (b) the right of the Association from time to time to assign on an equitable basis portions of the Common Elements such as parking spaces or storage for the exclusive use of the Owner of a particular Unit by a resolution of the Board or other appropriate written instrument;
- (c) the right of the Association to adopt, from time to time, Rules and Regulations concerning vehicular traffic and travel upon, in, under, and across the Project;
- (d) the right of the Association to adopt, from time to time, such Rules and Regulations concerning the Project as the Association may determine are necessary or prudent for the management, preservation, safety, control, orderly operation, or use of the Project for the benefit of all Owners; and
- (e) the agreement of all Owners, pursuant to this Declaration, to use reasonable and good faith efforts not to interfere with the use and enjoyment of other Owners of the Common Elements and such other Owners' respective Units.

Section 13.2. Easement of Enjoyment; Limited Common Elements. Subject to the provisions of this Declaration and the Rules and Regulations, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit.

Section 13.3. Recorded Easements. The Property shall be subject to any easements as shown on any recorded Map affecting the Property, as shown on the recorded Map, or as reserved or granted under this Declaration.

Section 13.4. Easements for Encroachments. The Project, and all portions of it, is subject to easements hereby created for encroachments between Units and the Common Elements as follows:

(a) in favor of all Owners, so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;

(b) in favor of each Owner, so that the Owner shall have no legal liability when any part of such Owner's Unit encroaches upon the Common Elements or upon another Unit; and

(c) in favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 13.4 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project; provided, however, that encroachments created by the intentional act of an Owner shall not be deemed to create an easement on the Property and shall be considered an encroachment upon the Project. Such encroachment shall be removed at Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely removed, the Association may remove the encroachment and the expense thereof shall be a Default Assessment to the Owner.

Section 13.5. Utility Easements. There is hereby created a general non-exclusive easement upon, across, over, in, and under all of the Units and Common Elements for the purpose of installation, replacement, repair, and maintenance of all utilities and services for the Owners, including but not limited to water, sewer, gas, telephone, electricity, security systems, cable television, cable, and other communication systems, and for ingress and egress in connection therewith. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Common Elements and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility or service company using this general easement shall (i) use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Owners, the Association, or Declarant; (ii) complete its installation and maintenance activities as promptly as reasonably possible; and (iii) restore the surface to its original condition as soon as possible after completion of its work. Should any utility or service company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant and the Association (subject to Declarant's approval during the Period of Declarant Control), shall each have the right and authority, but not the obligation, to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 13.5 shall in no way void, extinguish, or modify any other recorded easement on the Property.

Section 13.6. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

Section 13.7. Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be

necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 13.8. Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of an Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Owners shall be a Common Expense. In order to effectuate this right, the Association shall retain a pass key or other access device to each Unit and an Owner shall not change the exterior lock or other access system on its Unit without the Board's prior written consent and providing the Association with a replacement key or access device to accommodate the new lock or other access system.

Section 13.9. Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this ARTICLE 13, even though no specific reference to such easements or to this ARTICLE 13 appears in the instrument for such conveyance.

Section 13.10. Easement for Warranty Work. To the extent that and for as long as any Person remains liable under any warranty, whether statutory, express or implied, for any act or omission in the development or construction of any portion of the Project, then such Person and its contractors, agents and designees shall have the right, from time to time, to enter the Units (after reasonable notice to the affected Owner) and/or the Common Elements for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for such Person to fulfill any of its warranty obligations. Failure of the Association or any Owner to grant such access may result in the applicable warranty being nullified and of no further force or effect.

Section 13.11. Additional Easements. In the event an additional easement is reasonably requested by an Owner or the Association for purposes consistent with the intent of this Declaration, each Owner and the Association, as applicable, will act reasonably and in good faith in evaluating the request and will not unreasonably withhold its consent to the granting of any such easement.

#### **ARTICLE 14 SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS**

Section 14.1. Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Completion of Improvements. The right to complete Improvements indicated on the Map(s) filed with this Declaration.

(b) Exercise of Development Rights. The right to exercise any Development Right reserved in ARTICLE 15 of this Declaration.

(d) Easements. The right to create and grant easements through the Common Elements to any party for any purpose including, without limitation, for purposes of (i) making Improvements within the Project, and/or (ii) exercising any Reserved Declarant Rights.

(e) Control of Association and Board of Directors. During the Period of Declarant Control, the right to appoint or remove any officer of the Association or any member of the Board of Directors appointed by Declarant.

(f) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(g) Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

(h) Signs. The right to maintain signs on the Common Elements advertising the Project.

(i) Parking/Storage. The right to use and to allow others to use all parking and storage areas (other than parking or storage areas designated as Limited Common Elements appurtenant to Units not owned by Declarant) in connection with its marketing efforts, and the right to park vehicles for other purposes in accordance with Section 12.9.

Section 14.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 14.1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by grant, dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Project.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project, for the benefit of the Owners and/or the Association.

(c) Easement Rights. The right to grant easements in, on, over or through the Common Elements to any third party for the development or improvement of the Property or other Real Estate, as determined by Declarant.

(d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration or the Act.

Section 14.3. Limitations on Special Declarant Rights and Additional Reserved Rights. Special Declarant Rights and Additional Reserved Rights may be exercised at any time during the period described below in this Section unless sooner terminated (i) by an amendment to this Declaration

executed by Declarant; (ii) pursuant to a specific provision for earlier termination set forth above; or (iii) if and to the extent otherwise required under the Act. Any Special Declarant Right or Additional Reserved Rights may be exercised by Declarant so long as Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right; (c) owns any Unit or any interest therein; or (d) holds a Security Interest in any Unit(s); provided, however, all Special Declarant Rights and Additional Reserved Rights shall terminate thirty (30) years after the date of recording this Declaration.

Section 14.4. **Interference with Special Declarant Rights or Additional Reserved Rights.** Neither the Association nor any Owner may take any action or adopt any rule and/or regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of Declarant.

Section 14.5. **Rights Transferable.** Any Special Declarant Rights or Additional Reserved Right created or reserved under this ARTICLE 14 for the benefit of Declarant may be transferred, in whole or in part, to any Person by an instrument expressly describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## **ARTICLE 15 RESERVATION OF DEVELOPMENT RIGHTS**

Section 15.1. **Amendment of Declaration.** If Declarant elects to submit Additional Improvements to this Declaration, or to subdivide or to convey Units or Common Elements, then at such time as a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of the Additional Improvements are substantially completed is obtained, Declarant shall record an amendment to this Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to this Declaration. The amendment to this Declaration shall contain, at a minimum, the legal description of the Real Estate on which the Additional Improvements being submitted to this Declaration are located and a revised schedule of the Allocated Interests appurtenant to the Units in the Project.

Section 15.2. **Supplement to the Map.** Declarant shall, contemporaneously with the amendment of this Declaration, file a supplement to the Map showing the construction, combination, subdivision, conversion or allocation of Units or Common Elements allowed by this Article 15. The supplement to the Map shall substantially conform to the requirements contained in this Declaration.

Section 15.3. **Interpretation.** Recording of amendments to this Declaration and supplements to the Map in the Records shall automatically:

(a) vest in each existing Unit the reallocated Allocated Interests appurtenant to such Unit; and

(b) vest in each existing holder of a Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property as expanded. The Additional Improvements constructed on the Property as expanded shall be added to and become a part of the Project for all purposes. All conveyances of Units after such expansion shall be effective to transfer

rights in all Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 15.4. Construction Easement. Declarant reserves an easement through, over and across the Common Elements and Units as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration without consent of any party. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property not designated as reserved for future development in this Declaration or on the Map for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on any of the Property reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an Improvement containing Units. If Declarant grants any such easements, Exhibit C to this Declaration will be amended to include reference to the recorded easement.

Section 15.5. Termination of Development Rights. The Development Rights reserved to Declarant, for itself, its successors and assigns, shall expire thirty (30) years after the date of recording this Declaration in the Records, unless the Development Rights are reinstated or extended by the Association as provided in the Act, subject to whatever terms, conditions, and limitations the Board of Directors may impose on the subsequent exercise of Development Rights by Declarant. Declarant may at any time release and relinquish some or all of the Development Rights with respect to all or any part of the Real Estate subject to such rights by instrument executed by Declarant and effective when recorded in the Records. Upon the expiration or other termination of the Development Rights, any Real Estate then subject to such rights shall become Common Elements or Units, as applicable.

Section 15.6. Interference With Development Rights. Neither the Association nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish any Development Rights reserved by this ARTICLE 15 without the prior written consent of Declarant. In the event an Owner or the Association takes any such action, or is the losing party in any proceeding related to such action, then (in addition to all other remedies of Declarant) such Owner or the Association shall be responsible for Declarant's costs, including reasonable attorneys' fees, and shall also be responsible for any and all consequential damages, including damages as the result of any delay, related to such action. In the event an Owner or the Association takes any such action, or is the losing party in any proceeding related to such action, then (in addition to all other remedies of Declarant) such Owner or the Association shall be responsible for Declarant's costs, including reasonable attorneys' fees, and shall also be responsible for any and all consequential damages, including damages as the result of any delay, related to such action.

Section 15.7. Transfer of Development Rights. Any Development Rights created or reserved under this ARTICLE 15 for the benefit of Declarant may be transferred, in whole or in part to any Person by an instrument expressly describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## **ARTICLE 16 INSURANCE**



Section 16.1. Coverage. Commencing not later than the first conveyance of a Unit to a purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. The Association shall have the power and authority to obtain additional policies or coverages not specified herein in the Board's discretion. If such insurance is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy, or if the Board of Directors determines that any insurance described herein will not be maintained, the Board of Directors shall promptly cause notice of that fact to be delivered to all Owners and Eligible First Mortgagees at their respective last known addresses.

(a) Property Insurance. The Association shall maintain property insurance on the Project for special covered causes of loss (or such equivalent coverage as may hereafter be customarily offered in the insurance industry) in an amount not less than the full insurable replacement cost of the insured property (as determined by the Board of Directors) less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land and other items normally excluded from property insurance policies. Co-insurance shall not be permitted.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Project, insuring the Board of Directors, the Association, the Managing Agent, and their respective employees, agents and all Persons acting as agents therefor. The Declarant shall be included as an additional named insured in Declarant's capacity as an Owner and member of the Board of Directors. Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership interest in, existence, use or management of the Common Elements or membership in the Association. The insurance shall cover claims of one or more insured parties against the other insured parties.

(c) Other Insurance. The Board of Directors may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Directors deems reasonable and necessary in order to protect the Project, the Association and the Owners.

(d) Owners' Policies. Each Owner of a Unit is encouraged to obtain additional insurance at such Owner's own cost for such Owner's own benefit covering all personal property within such Owner's Unit and all Improvements within the interior finished boundaries of such Owner's Unit. All such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be affected or diminished by reason of any such insurance carried by any Owner. Each Owner waives and releases all claims against the Association to the extent such claim is covered by applicable insurance policies, regardless of whether damage loss or injury arose from the negligence or breach of any agreement by the Association. Each Owner acknowledges that insurance obtained by the Association does not obviate the need for an Owner to obtain separate insurance for such Owner's benefit. Each Owner may also obtain general liability insurance at such Owner's own cost for such Owner's own benefit covering operations and activities within such Owner's Unit. Such coverage may also extend to cover any legal liability imposed on an Owner due to such Owner's interest in the Common Elements.

Section 16.2. Required Provisions. All insurance policies carried by the Association pursuant to the requirements of this ARTICLE 16 must provide that:

- (a) each Owner and each Eligible First Mortgagee is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;
- (b) the insurer waives its rights to subrogation under the policy against any Owner or member of an Owner's household;
- (c) no act or omission by any Owner or Eligible First Mortgagee, unless acting within the scope of such Owner's authority on behalf of the Association, if any, will void the policy or be a condition to recovery under the policy;
- (d) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the risks covered by the policy (other than an Owner's policy covering such Owner's personal property), the Association's policy provides primary insurance;
- (e) any loss covered by the policies must be adjusted with the Association;
- (f) the insurance proceeds for any loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association and not to any holder of a Security Interest;
- (g) the insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Security Interest; and
- (h) the insurer issuing the policy may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been delivered to the Association and any Owner(s) and holder(s) of Security Interests to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 16.3. Claims by Owner. An Owner may file a claim against the policy of the Association to the same extent, and with the same effect, as if the Owner were a named insured if the following conditions are met: (a) the Owner has contacted the Board of Directors or Managing Agent in writing, and in accordance with any applicable association policies or procedures for owner-initiated insurance claims, regarding the subject matter of the claim, (b) the Owner has given the Association at least fifteen (15) days to respond in writing, and, if so requested, has given the Association's agent a reasonable opportunity to inspect the damage; and (c) the subject matter of the claim falls within the Association's insurance responsibilities. The Association's insurer, when determining premiums to be charged to the Association, shall not take into account any request by an Owner for a clarification of coverage.

## **ARTICLE 17 RESTORATION UPON DAMAGE OR DESTRUCTION**

Section 17.1. Duty to Restore. Any portion of the Project, for which the Association is required to carry insurance under the Act, or for which insurance carried by the Association is in effect, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Project is terminated;

(b) repair or replacement would be illegal under Applicable Law or prohibited under the Condominium Documents;

(c) sixty-seven percent (67%) of the actual Total Voting Power of the Owners vote not to rebuild (unless a lesser percentage is required by Applicable Law and cannot be varied by Agreement, in which case such lesser percentage shall apply but such lesser percentage shall be required to include the vote not to rebuild of every Owner of a Unit or Limited Common Element that will not be rebuilt; or

In the event the Project is not repaired or replaced as allowed by Subsections (a), (b) and (c) above, then the Real Estate in the Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

Section 17.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 17.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors and any percentage of Owners required to approve the same under the Act.

Section 17.4. Replacement of Less Than Entire Property. If only a portion of the Project (rather than the entire Project) is repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project and any remaining proceeds (after any other distribution required by Applicable Law) shall be distributed or credited as follows:

(a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must first be distributed or credited to the Owner(s) of the Unit and to the Owner(s) of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;

(b) the remainder of the proceeds must be distributed or credited to each Owner or holder of a Security Interest, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Units; and

(c) if the Owners vote not to rebuild a Unit, the Allocated Interests of the Unit shall be reallocated as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

Section 17.5. Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Directors, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and holders of Security Interests as their interest may appear. Subject to the provisions of the Sections above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Owners and holders of Security Interests 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 Project is terminated, in which event the surplus proceeds will be distributed as provided in this Declaration and the Act. Except to the extent otherwise required by the Act, no provision of the Condominium Documents shall be construed to grant to any

Owner, any priority over any rights of any First Mortgagees pursuant to the terms of their Security Interests in the case of the distribution to Owners of insurance proceeds for losses to Units and/or the Common Elements or any portions thereof.

Section 17.6. Certificates by the Board of Directors. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

- (a) whether or not damaged or destroyed Property is to be repaired or restored; and
- (b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

#### **ARTICLE 18 CONDEMNATION**

If all or part of the Project is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

#### **ARTICLE 19 DISPUTE RESOLUTION**

Section 19.1. Mediation of Disputes between Owners and Association.

(a) Prior to pursuing any of the enforcement proceedings set forth below, any disputes between the Association and one or more Owners shall be submitted to non-binding mediation to be held within the limits of the Town of Carbondale by a mediator selected by the parties, who, in good faith will work together to select a mediator.

(b) If the mediation provided for in Section 19.1(a) does not result in a settlement of such dispute between the Association and one or more Owners, the following enforcement provisions shall apply:

(i) Enforcement of the terms and conditions of this Declaration with respect to the Association or the Common Elements shall be enforceable by any Owner by a proceeding for injunctive relief.

(ii) Enforcement of the terms and conditions of this Declaration with respect to an Owner or a Unit shall be enforceable by Declarant or by the Association by:

(A) a proceeding for injunctive relief;

(B) a suit or action to recover damages; and/or

(C) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Occupants from the use of any Common Elements and from participation in any Association affairs.

(c) By acceptance of a deed to a Unit, an Owner agrees to be bound by the terms and conditions of this Declaration. In addition to all other remedies provided to the Association in this Declaration, if an Owner fails to perform or observe any covenant or condition to be

performed or observed by such Owner under this Declaration or any other Association Document, the Association shall have the following special rights and remedies:

(d) The Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty (30) days after the Owner receives a written notice of a Default Assessment therefor from the Association.

(e) The Association may, after notice and opportunity to be heard, fine the Owner, as a Default Assessment, an amount not to exceed \$100 per day that such violation remains uncured for each violation. The Owner shall pay any such fine to the Association within 30 days after the Owner receives written notice of a Default Assessment therefor from the Association.

(f) With respect to an Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.

(g) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(h) Notwithstanding anything to the contrary contained in this Declaration, any sums paid to the Association by an Owner shall be applied in the following order: first, to costs incurred by the Association to collect outstanding unpaid sums due to the Association; second, to satisfy any outstanding Default Assessments or other fines; third, to satisfy any outstanding interest accrued on any assessed but unpaid Assessments; and forth, to satisfy any assessed but unpaid Assessments other than Default Assessments.

(i) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(j) The Association may adopt such Rules and Regulations as the Board of Directors deems necessary or appropriate to administer and enforce the terms and conditions of this Declaration and the other Condominium Documents.

Section 19.2. Attorneys' Fees. In the event of any dispute under or with respect to this Declaration or any other Condominium Document, the prevailing party shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

Section 19.3. Interest. If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of 18% per annum, or such other rate as the Board of Directors may establish from time to time, from the due date of such unpaid amount until the date paid.

Section 19.4. Nonwaiver. Failure by the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this

Declaration or any other Condominium Document shall in no way be deemed to be a waiver of the right to do so thereafter.

## **ARTICLE 20 DURATION OF COVENANTS; AMENDMENT AND TERMINATION**

Section 20.1. Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until this Declaration is terminated pursuant to the terms hereof.

Section 20.2. Amendment of Declaration. This Declaration may be amended as follows:

(a) General Amendments. Except as otherwise expressly permitted or restricted by this Section 20.2 and as provided for in ARTICLE 21, this Declaration may be amended by a vote or agreement of a Majority of Owners. To the extent the proposed amendment involves an issue subject to the District voting, a majority of a quorum of the Owners in the affected District will also be required, such that the Majority of Owners must include a majority of a quorum of the Owners in such District. Notwithstanding the foregoing provision, the percentage of the Total Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative voting power prescribed for action to be taken under that clause or provision. The Association and the Owners may not, while any Reserved Declarant Right exists, amend this Declaration in any matter that restricts or reduces Declarant's rights or increases or expands Declarant's obligations or liabilities hereunder without Declarant's written consent.

(b) Permitted Use Amendments. Except to the extent otherwise expressly permitted or required in this Declaration, this Declaration may be amended to change the uses to which any Unit is restricted only by a unanimous vote or agreement of Owners.

(c) Reserved Amendment Rights. To the extent that this Declaration and the Act expressly permit or require amendments that may be executed by Declarant or by the Association, this Declaration may be amended by amendments executed solely by Declarant or solely by the Association.

Section 20.3. Amendment of Other Condominium Documents. The Articles of Incorporation and Bylaws may be amended in accordance with the terms of such documents and the Nonprofit Act. The Rules and Regulations may be amended as determined by the Board of Directors. While any Reserved Declarant Right exists, the Condominium Documents may not be amended in any matter that restricts or reduces Declarant's rights or increases Declarant's obligations or liabilities thereunder without Declarant's written consent.

Section 20.4. Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of: (a) any Owners desiring an amendment as provided for in this Declaration or the Act; (b) Declarant, to the extent the right to amend this Declaration is reserved to Declarant and exercised by Declarant; or (c) in all other cases by the Association as a Common Expense.

Section 20.5. When Modifications Permitted. Notwithstanding the provisions of Section 20.2 above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 20.6. Recording of Amendments. Any amendment to this Declaration made in accordance with this ARTICLE 20 shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of Declarant or the Secretary of the Association, as applicable, stating that the required vote of Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable), if any, were obtained and are on file in the office of the Association or were not required to be obtained pursuant to this Declaration or the Act. The amendment must be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of each Person or entity executing the Amendment.

Section 20.7. Rights of Declarant. Notwithstanding anything to the contrary contained herein, and to the extent permitted by the Act, no amendment or modification to, or impairment of any of the rights contained in, any of Section 12.10, ARTICLE 14, ARTICLE 15, Section 21.5, this Section nor any provision of this Declaration reserving or creating any Reserved Declarant Right shall be effective or enforceable without the prior consent of Declarant during the longer of the Period of Declarant Control or the period in which Declarant continues to hold Reserved Declarant Rights.

## **ARTICLE 21 MISCELLANEOUS**

Section 21.1. Enforcement. The provisions of the Act and the provisions of the Condominium Documents may be enforced by any Person subject to this Declaration through proceedings at law or in equity against any Person subject to this Declaration who has violated or is violating or attempting to violate such provisions, all as more specifically set forth in the Act.

Section 21.2. Notices. All notices, demands, or other communications required or permitted to be given hereunder shall be in writing, and any and all such items shall be deemed to have been duly delivered upon personal delivery; upon actual receipt, in the case of notices forwarded by certified mail, return receipt requested, postage prepaid; as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service; or as of the third business hour (a business hour being one of the hours from 8:00a.m. to 5:00p.m. on business days) after transmitting by telecopier, facsimile, or electronic mail.

Section 21.3. Nonwaiver. Failure by Declarant, the Association, or any Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Condominium Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 21.4. Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of this Declaration by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 21.5. Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 21.6. Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 21.7. Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 21.8. Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 21.9. Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado, and specifically, the provisions of the Act and not the general common law (including remedies) of tenancy-in-common.

Section 21.10. Third Party Beneficiary. This Declaration is submitted, imposed, and declared solely for the benefit of Declarant, Owners, First Mortgagees, and their respective successors, assigns, heirs, executors, administrators, and personal representatives. No party shall be deemed a third party beneficiary of this Declaration.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Carlo Angelini., Declarant

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EAGLE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February 2019 by Carlo Angelini

Witness my hand and official seal  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**Exhibit A**  
**To**  
**Declaration**

**LEGAL DESCRIPTION**

The Property referred to in the Declaration is described as follows:

**Exhibit B**  
**To**  
**Declaration**

**BYLAWS**  
**OF**  
**718 LINCOLN CONDOMINIUM ASSOCIATION, INC.**  
**a Colorado nonprofit corporation**

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**BYLAWS  
OF  
SOUTH ASPEN STREET PUD NORTH CONDOMINIUM ASSOCIATION, INC.**

The name of the corporation shall be 718 Lincoln Condominium Association, Inc., a Colorado nonprofit corporation (the “**Association**”).

**ARTICLE 1 PURPOSES, ASSENT OF OWNERS, AND DEFINITIONS**

Section 1.1 Purposes. The Association is formed pursuant to the Colorado Revised Nonprofit Corporation Act, Colo. Rev. Stat. § 7-121-101 et seq. (the “**Nonprofit Act**”) and the Colorado Common Interest Ownership Act, Colo. Rev. Stat. § 38-33.3-101 et seq. (the “**Act**”), as each may be amended from time to time. The primary purposes for which the Association is formed are (a) to provide for the operation, administration, use, and maintenance of certain common areas and other property more fully described in the Condominium Declaration for 718 Lincoln Condominiums, recorded in the office of the Clerk and Recorder of Garfield County, Colorado, as amended or supplemented from time to time (the “**Declaration**”); (b) to preserve, protect, and enhance the values and amenities of such property; and (c) to promote the health, safety, and welfare of members of the Association.

Section 1.2 Assent. All present or future Owners, Occupants, or any other Persons using the facilities of the Project in any manner are subject to these Bylaws and any Rules and Regulations adopted by the Board of Directors pursuant to these Bylaws. Acquisition or rental of any Unit in the Project, or the mere act of occupancy of any Unit, shall constitute an acceptance and ratification of these Bylaws and an agreement to comply with said Rules and Regulations.

Section 1.3 Definitions. Unless otherwise specified, capitalized terms used in these Bylaws shall have the same meanings in these Bylaws as such terms have in the Declaration.

**ARTICLE 2 MEMBERSHIP**

Section 2.1 Membership. Ownership of a Unit is required in order to qualify for membership in the Association.

Section 2.2 Responsibilities of Owners. Each membership is appurtenant to the fee simple title to a Unit. Any Person, including Declarant, upon becoming an Owner, shall automatically become a member of the Association and be subject to these Bylaws. Membership shall terminate without any formal Association action whenever such Person ceases to own a Unit, but such termination shall not relieve or release any former Owner from any liability or obligation incurred under these Bylaws, or in any way connected with the Association arising during the period of such ownership, and shall not impair any rights or remedies which the Board of Directors or others may have against such former Owner arising out of ownership of the Unit and membership in the Association and the covenants and obligations incident thereto. Following termination of the Project, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Project pursuant to the Act.

Section 2.3 Membership Certificates. No certificates of stock shall be issued by the Association, but the Board of Directors may, if it so elects, issue membership cards to Owners. Such membership card shall be surrendered to the secretary of the Association whenever ownership of the Unit designated on the card is transferred and membership terminates.

Section 2.4 Voting Rights. Each Unit shall be allocated one vote. Declarant shall be entitled to vote with respect to any Unit owned by it. Cumulative voting shall not be allowed in the election of the Board of Directors or for any other purpose. The Association shall not have a vote with respect to any Unit which may be owned by it. Percentages of Owners or of votes stated in the Condominium Documents shall be deemed to mean the stated percentage of the number of total votes required to be cast in order to satisfy quorum requirements or, if expressly required, the Total Voting Power as defined in the Declaration.

## Section 2.5 Designated Person and Registered Address.

(a) If title to a Unit is held by more than one (1) individual, by a firm, corporation, partnership, association or other legal entity or any combination thereof, such individuals, entity, or entities shall, by written instrument executed by all such parties and delivered to the Association, appoint and authorize one (1) person to represent the Owner(s) of the Unit (the “**Designated Representative**”). Such representative shall be a natural person who is an Owner, or a designated board member or officer of a corporate Owner, or a general partner of a partnership Owner, or a comparable representative of any other entity, and such representative shall have the authority to make decisions and take actions relating to the Unit and to membership in the Association including, without limitation, the power to cast votes on behalf of the Owners as a member of the Association and serve on the Board of Directors if elected. The Designated Representative shall be the person to whom all notices and deliveries under the Condominium Documents are addressed.

(b) There shall be a single registered mailing address associated with each Unit. The Owner, or the Designated Representative of the Owners, of a Unit shall furnish such registered address to the Association within ten (10) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by the individual Owner or the Designated Representative, as applicable. If no address is registered, then any notice shall be deemed duly given if delivered to the Unit if a copy of such notice is held and available for the Owner at the principal office of the Association.

## ARTICLE 3 MEETINGS OF OWNERS

Section 3.1 Place of Meeting. Meetings of the Owners shall be held at such place, within the Town of Carbondale, State of Colorado, as the Board of Directors may determine. All or some of the Owners may participate in a meeting by means of a conference telephone, electronic conferencing or similar communications equipment by which all Persons participating in the meeting can hear each other or read the words of each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 3.2 Annual Meeting. Regular meetings of Owners shall be held annually. The first annual meeting of the Owners shall be held within one (1) year after the date of the adoption of these Bylaws. Thereafter, the annual meetings of the Owners shall be held on a date and at a time selected by the Board of Directors each year. The purpose of the annual meetings is to (i) propose and/or review the Budget; (ii) during the Period of Declarant Control as provided in Section 7.6 of the Declaration and Section 4.2 of these Bylaws and after the Period of Declarant Control, to appoint or elect certain or all of the members of the Board of Directors; and (iii) to transact such other Association business as may properly come before the Owners at the meeting.

Section 3.3 Special Meetings. Calls for special meetings of the Owners may be made (i) by the president of the Association, (ii) by a majority of the Board of Directors, or (iii) by written instrument signed by Owners representing twenty-five percent (25%) of the Total Voting Power in the Association.

Section 3.4 Notice of Meetings. Written notice of each meeting shall be delivered to the registered address of each Owner entitled to be represented by a vote not fewer than ten (10) nor more than fifty (50) days before the date of the meeting, by or at the direction of the president, or the secretary, or the Persons calling the meeting as provided under these Bylaws. Such notice shall state (i) basic meeting information such as the place, day, and hour of the meeting and (ii) the items on the agenda for the meeting, including the general nature of any proposed amendment to the Declaration or these Bylaws, any proposal to remove an officer or member of the Board of Directors, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. No action shall be adopted at a meeting except as stated in the notice. Attendance at any meeting by a member shall constitute a waiver of notice by that member, except where a member attends the meeting for the expressed purpose of objecting that the meeting was not lawfully called or convened. If electronic means are available, the Association shall provide notice of all regular and special meetings of Owners by electronic mail to all Owners who so request and who furnish the Association with their electronic mail addresses, as soon as possible but in all cases, at least twenty-four (24) hours before such meetings. In addition to the requirements contained hereinabove and in addition to any electronic posting or electronic mail notices, the notice of any meeting shall be physically posted in a conspicuous place at the Project, to the extent that such posting is feasible and practicable.



Section 3.5 Meeting to Approve Annual Budget. The Budget shall be adopted annually in accordance with the Declaration and the applicable provisions of the Act.

Section 3.6 Adjourned Meetings. If any meeting of the Owners cannot be organized because a quorum, as defined below, is not present, the Owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is obtained.

Section 3.7 Proxies. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless it provides otherwise. A form of proxy may be distributed to each Owner to afford the Owner(s) of such Unit the opportunity to cast the vote allocated to such Unit in absentia at a meeting of Owners of the Association, provided that it meets the requirements for a written ballot set forth in Section 3.12 below and includes the name or names of the person(s) to whom the proxy is given and who expect to be in attendance in person at the meeting for the purpose of casting the vote to reflect the absent Owner's vote.

Section 3.8 Multiple Owners-Proxy. If title to a Unit is held by more than one Person, and if only one of such multiple Owners of a Unit is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Unit. If more than one of the multiple Owners of a Unit are present, in person or by proxy, and there is no Designated Representative as required under Section 2.5, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Owners, which majority agreement may be assumed for all purposes if any one of the multiple Owners cast the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit. If such protest is made, the vote allocated to the Unit may only be cast by written instrument executed by all Owners who are present at the meeting.

Section 3.9 Quorum. Except as otherwise provided in these Bylaws, the presence at the beginning of the meeting in person or by proxy of the Owners possessing sufficient votes to constitute seventy-five percent (75%) of the Total Voting Power of all Owners shall constitute a quorum, and such Owners present in person or by proxy shall constitute the Owners entitled to vote upon any issue presented at a meeting at which a quorum is present.

Section 3.10 Voting. Except as otherwise required by the Declaration, the Act or by these Bylaws, (A) the votes of Owners who are present either in person or by proxy at any duly convened meeting of Association at which a quorum has been established and who cast a simple majority of the total votes eligible to be voted by such present or represented Owners shall decide any question under consideration, and shall constitute the act of and be binding upon the Association.

Section 3.11 Waiver of Meeting and Consent to Action. Whenever the vote of Owners at a meeting of the Association is required or permitted by any provision of these Bylaws to be taken in connection with any action of the Association (including, without limitation, an annual meeting or a vote on ratification of the Budget) the meeting and vote of Owners may be dispensed with and the action in question may be approved if (a) notice of the proposed action is given to all Owners eligible to vote, and (b) a sufficient number of Owners eligible to vote concerning such matter consent in writing to dispense with the meeting and consent in writing to the action in question. A sufficient number is at least the number required to satisfy the voting power that would be necessary to approve the action at a meeting.

Section 3.12 Action by Written Ballot. Any action that may be taken at any annual or special meeting of Owners (including, without limitation, an annual meeting or ratification of the Budget) may be taken without a meeting and through voting by written (including electronic) correspondence, if a written ballot is distributed to every Owner entitled to vote on the matter, setting forth each proposed action and providing an opportunity to vote for or against each proposed action;

Section 3.13 Representation of Mortgagees. All First Mortgagees or their representatives shall be entitled to attend Association meetings of the Owners and shall have the right to address the Owners regarding such First Mortgagees' issues and concerns relating to the Project.

Section 3.14 Meetings of Owners. All Meetings of Owners and Designated Representatives shall be open to every Owner and Designated Representative and all Owners and Designated Representatives shall be permitted to attend, listen and speak at an appropriate time during deliberations and proceedings.

Section 3.15 Record Date. The Board is authorized to fix a record date with respect to any annual meeting and special meeting of the Owners for the purposes of determining the members of the Association in good standing and entitled to notice of the meeting, for determining the members entitled to vote at the meeting and for determining the members entitled to exercise any right in respect of any other lawful action

## **ARTICLE 4 BOARD OF DIRECTORS**

Section 4.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors, initially composed of three (3) natural persons. At the first meeting of the Association after the Period of Declarant Control, three (3) Owners or other persons shall be elected to the Board of Directors by the Owners.

Section 4.2 Required Election of Owners. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created by Declarant to Owners other than Declarant, at least one (1) member shall 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 by Declarant to Owners other than Declarant, not fewer than two (2) of the members of the Board of Directors must be elected by Owners other than Declarant.

Section 4.3 Declarant Control of the Association. There shall be a Period of Declarant Control of the Association, during which Declarant, or Persons designated by Declarant, may appoint and remove the officers of the Association and members of the Board of Directors (subject to the requirements of Section 4.2 above). The Period of Declarant Control shall commence upon filing of the Articles of Incorporation and shall terminate as provided in the Declaration. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. The names and addresses of the Persons who are to initially act in the capacity of the members of the Board of Directors until their successors are duly elected and qualified are as set forth in the organizational consent minutes of the Association, a copy of which has been placed in the Association's minute book.

Section 4.4 Election and Term of Office. Until the first annual meeting after the Period of Declarant Control terminates, the terms of members of the Board of Directors appointed by Declarant shall continue until and expire on the date of the first meeting of the Owners following termination of the Period of Declarant Control. All other members of the Board of Directors serving during the Period of Declarant Control shall serve three (3) year terms (subject to the provisions of the following sentence). At the first meeting of the Association after the Period of Declarant Control, the terms of all existing members of the Board of Directors shall be deemed to have expired, and an election shall be held for all members of the Board of Directors. The terms of the members of this initial Board of Directors elected by the Owners shall be staggered so that two members shall be elected to serve a one (1) year term, two members shall be elected to serve a two (2) year term, and one member shall be elected to serve a three (3) year term. At the expiration of the initial term of office for each respective member of the Board of Directors, his or her successor shall be elected to serve a term of three (3) years. Notwithstanding any provision in this Section 4.4 to the contrary, members of the Board of Directors may be elected by written consent or ballot pursuant to the conditions set forth in Sections 3.11 or 3.12 above. Each member of the Board of Directors shall hold office until the election and qualification of his or her successor, unless such a member is removed or otherwise vacates in accordance with these Bylaws. At any meeting at which on or more members of the Board of Directors is to be elected, the Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Nonprofit Act for conducting the elections.

Section 4.5 Removal of Members of the Board of Directors. A regular or special meeting of Owners may be called for the purpose of considering the removal of any member of the Board of Directors. The Board of Directors shall designate by resolution or motion the date and time of such regular or special meeting after such meeting is properly set or called in accordance with these Bylaws. Any one (1) or more of the members of the Board

of Directors, other than a member appointed by Declarant, may be removed with or without cause by an affirmative vote of seventy-five percent (75%) of the voting power of the Owners present in person or represented by proxy and eligible to vote.

#### Section 4.6 Vacancies.

(a) During Period of Declarant Control. During the Period of Declarant Control, if a member of the Board of Directors appointed by Declarant dies or resigns, Declarant shall appoint a new member of the Board of Directors. If a member of the Board of Directors not appointed by Declarant dies or resigns during this period, such vacancy shall be filled as provided in subsection (b) below.

(b) After the Period of Declarant Control. After the Period of Declarant Control, any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of all of the remaining Board of Directors (though the remaining members may be less than a quorum of the Board of Directors). The term of the member of the Board of Directors so elected shall be coincident with the term of the replaced member of the Board of Directors.

Section 4.7 Quorum of the Board of Directors. A majority of the number of members of the Board of Directors fixed from time to time by these Bylaws shall constitute a quorum for the transaction of business. Any act by a majority vote of the Board of Directors in attendance where a quorum is present shall be an act of the Board of Directors.

Section 4.8 Place and Notice of the Board of Directors Meetings. Any regular or special meetings of the Board of Directors may be held at such place within the Town of Carbondale, State of Colorado and upon such notice as the Board of Directors may prescribe. Any special meeting of the Board of Directors shall be preceded by at least two days' notice of the date, time and place of the meeting. The Board of Directors shall hold a regular meeting at least once each year and shall, in addition, meet as often as they deem necessary or desirable to perform their duties hereunder. Attendance of a member of the Board of Directors at any meeting shall constitute a waiver of notice of such meeting, except when a member of the Board of Directors attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Before, at, or after any meeting of the Board of Directors, any member of the Board of Directors may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the waiver of notice of such meeting. The Board of Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all members of the Board of Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors. All or some of the members of the Board of Directors may participate in a meeting by means of a conference telephone, electronic conferencing or similar communications equipment by which all Persons participating in the meeting can hear each other or read the words of each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 4.9 Powers and Duties. The Board of Directors shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary, desirable, or appropriate for the administration of the affairs of the Association and for the operation and maintenance of the Project, including (but not limited to) the powers and duties stated in the Declaration.

Section 4.10 Managing Agent. The Board of Directors may employ for the Association one or more Managing Agents at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize; provided, however, that the Board of Directors in delegating such duties shall not be relieved of its responsibility under the Declaration. The Managing Agent shall insurance coverage, in limits approved by the Board of Directors, for the benefit of the Association. The Managing Agent shall maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the Managing Agent and shall maintain all reserve accounts for the Association separate from the operational accounts of the Association. The Managing Agent shall provide an annual accounting for Association funds and a financial statement to the Association. Any contract that the Board of Directors enters into with a Managing Agent shall

provide that the contract is terminable for cause without penalty to the Association and shall be subject to renegotiation from time to time.

Section 4.11 Compensation of the Members of the Board of Directors. Members of the Board of Directors shall not be paid any compensation for their services performed as members of the Board of Directors unless a resolution authorizing such remuneration shall have been adopted by the members of the Association.

Section 4.12 Board of Directors Meetings. All meetings of the Board of Directors, will be open to the Owners and Designated Representatives, and the Owners and Designated Representatives shall be permitted to attend, listen and speak at an appropriate time during deliberations and proceedings.

Section 4.13 Conflict of Interest. All conflicts of interest shall be handled in accordance with Section 7-128-501 of the Nonprofit Act, which provides as follow:

(a) No loans shall be made by a corporation to its directors or officers and any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof;

(b) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or solely because the director's vote is counted for such purpose if (i) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum, or (ii) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon, or (iii) the conflicting interest transaction is fair as to the nonprofit corporation; and

(c) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

## **ARTICLE 5 OFFICERS AND THEIR DUTIES**

Section 5.1 Enumeration of Officers. The officers of the Association shall be a president, vice president, secretary, and treasurer, and such other officers as the Board of Directors may from time to time by resolution create. The president must be a member of the Board of Directors.

Section 5.2 Election of Officers. Except for officers who shall be appointed by the Declarant as provided in Section 4.3, the election of officers shall take place at the first meeting of the Board of Directors and thereafter at the first meeting of the Board of Directors following each annual meeting of the Owners.

Section 5.3 Term of Officers. The officers shall be elected annually by the Board of Directors and each shall hold office for one (1) year unless such officer shall sooner die, resign, or shall be removed or otherwise disqualified to serve.

Section 5.5 Resignation and Removal. Except for officers appointed by the Declarant as provided in Section 4.3, any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such

resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.6 Vacancies. After the Period of Declarant Control, a vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 5.7 Multiple Offices. Any two (2) or more offices may be held by the same person.

Section 5.8 Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Owners and of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign on behalf of the Association all leases, mortgages, deeds, notes and other written instruments; and shall exercise and discharge such other duties as may be required of the president by the Board of Directors. In addition, the president shall have all of the general powers and duties that are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Declaration (in accordance with the provisions of the Declaration) and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

(b) Vice President. The vice president shall act in the place and stead of the president in the event of his or her absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of the vice president by the Board of Directors.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Owners; keep the corporate stamp or seal of the Association, if any, and place it on all papers requiring said stamp or seal, if necessary; serve notice of meetings of the Board of Directors and of the Owners; keep appropriate current records showing the Owners and Designated Representatives together with their addresses; and shall perform such other duties as may be required of the secretary by the Board of Directors.

(d) Treasurer. The treasurer shall receive and may endorse on behalf of the Association, for collection only, all checks, notes, and other obligations and shall deposit the same and all monies in appropriate bank accounts of the Association. The treasurer shall disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; at the direction of the Board of Directors, cause an audit of the Association books to be made; and prepare the annual Budget and a statement of income and expenditures to be presented to the Owners at the regular annual meeting of Owners, and deliver a copy of each to the Owners. Except for reserve funds described below, the treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in such segregated accounts or other investments as the Board of Directors decides in accordance with the Rules and Regulations. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, by the Treasurer or another officer provided that the Board of Directors may adopt resolutions imposing limitations on the manner of withdrawal or requiring more than one signatory for certain types of withdrawals.

Section 5.9 Execution of Instruments. All agreements, contracts, deeds, leases, checks, notes and other instruments of the Association may be executed by any person or persons as may be designated by resolution of the Board of Directors, including the Managing Agent. Any officer may prepare, execute, certify and record duly adopted amendments to the Declaration on behalf of the Association. If appropriate, the Managing Agent or any officer of the Association may file an election under Section 528 of the Internal Revenue Code in any given year for the Association.

## **ARTICLE 6 INDEMNIFICATION OF MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS**

Section 6.1 Actions Other than by or in the Right of the Association. The Association shall indemnify any Person who was or is a party, or is threatened to be made a party to any pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that such Person is or was a member of the Board of Directors or officer, who is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably incurred by such Person in connection with such action, suit or proceeding, if such Person acted in good faith and in a manner that he or she reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the Person did not act in good faith and in a manner such Person reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his or her conduct was unlawful.

Section 6.2 Actions by or in the Right of the Association. The Association shall indemnify any Person who was or is a party or who is threatened to be made a party to any pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such Person is or was a member of the Board of Directors or officer or is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith and in a manner that he or she reasonably believed to be in the best interests of the Association; but no indemnification shall be made in respect of any claim, issue or matter as to which such Person has been adjudged to be liable for negligence, recklessness, or willful misconduct in the performance of his or her duty to the Association unless, and to the extent that, the court in which such action or suit was brought determines upon application that (despite the adjudication of liability), in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnification for such expenses.

Section 6.3 Successful on the Merits. To the extent that a member of the Board of Directors or officer of the Association has been wholly successful on the merits in defense of any action, suit or proceeding referred to in Section 6.1 or Section 6.2 of this Article 6, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by him or her in connection therewith.

Section 6.4 Determination Required. Any indemnification under Sections 6.1 or 6.2 of this Article 6 (unless ordered by a court) and as distinguished from Section 6.3 of this Article 6, shall be made by the Association only as authorized by the specific case upon a determination that indemnification of such Person is proper in the circumstances, because such Person has met the applicable standard of conduct set forth in Sections 6.1 or 6.2 above. Such determination shall be made by the Board of Directors by majority vote of those members of the Board of Directors who were not parties to such action, suit or proceeding or, if a majority of disinterested members of the Board of Directors so directs, by independent legal counsel or by members entitled to vote thereon. Such determination shall be reasonable, based on substantial evidence of record, and supported by a written opinion. The Board of Directors shall provide a copy of its written opinion to the Person seeking indemnification upon request.

Section 6.5 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses incurred by a former or current member of the Board of Directors or officer who is a party to a proceeding in advance of final disposition of the proceeding if: (a) such Person furnishes to the Association a written affirmation, executed personally or on such Person's behalf, of his or her good faith belief that he or she has met the standard of conduct described in Sections 6.1 or 6.2 of this Article 6; (b) such Person furnishes to the Association a written agreement, executed personally or on such Person's behalf, to repay the advance if it is ultimately determined that he or she did not meet the required standard of conduct; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article. The undertaking required in this paragraph shall be an unlimited general obligation of the Board of Directors but need not be accepted by a particular Board member or officer or may be accepted without reference to financial ability to make repayment.

Section 6.6 No Limitation of Rights. The indemnification provided by this Article 6 shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to the Act or the Nonprofit Act.

## **ARTICLE 7 BYLAWS**

Section 7.1 Amendments. These Bylaws may be amended by (i) a vote of a majority of a quorum of the Board of Directors at a regular or special meeting of the Board of Directors, or (ii) at any regular meeting of the Owners or at any special meeting called for the purpose of amending the Bylaws, by the affirmative vote of a majority of a quorum of Owners present at the meeting in person or represented by proxy and eligible to vote. Any amendment shall be binding upon every Owner. Any provision of these Bylaws adopted at a regular or special meeting of the Owners may thereafter only be amended at a regular or special meeting of the Owners. Notwithstanding the above, neither the Board nor the Owners shall have any power to amend the Bylaws in such a manner as to materially change the effect of the express provisions of the Declaration unless any standard for an amendment of such provisions in the Declaration is satisfied. No amendment shall serve to shorten the term of any member of the Board of Directors, or conflict with the Nonprofit Act or the Act or delete any provision which must be contained in these Bylaws under the terms of the Nonprofit Act or the Act, or conflict with the Declaration or the Articles of Incorporation of the Association.

Section 7.2 Compliance with the Act. These Bylaws are intended to comply with the requirements of the Act and the Nonprofit Act. If any of these Bylaws conflict with the provisions of the Act or the Nonprofit Act, the provisions of the Act or the Nonprofit Act, as applicable, will govern the Association.

Section 7.3 Conflict Between Documents. In the case of any conflict between or among the Condominium Documents, the Declaration controls over the Articles of Incorporation, these Bylaws and the Rules and Regulations. The Articles of Incorporation control over these Bylaws and the Rules and Regulations. These Bylaws control over the Rules and Regulations.

## **ARTICLE 8 INFORMATION, BOOKS AND RECORDS**

Section 8.1 Statement of Unpaid Assessments. The Association shall provide statements of unpaid assessments in accordance with Section 33 33.3 316 of the Act, as described in the Declaration. The treasurer, a Managing Agent employed by the Association or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute such statements. The amount of any fee for preparing such statements of unpaid Assessments and the time of payment shall be set forth in the Rules and Regulations. Any such fee that is not paid when due may be assessed as a default Assessment against the Unit for which the certificate or statement is furnished.

Section 8.2 Owner Education. The Association or a Managing Agent employed by the Association shall provide to the Owners, at least one time per year, free of charge, education regarding the general operations of the Association as well as the rights and responsibilities of Owners, the Association and the Board of Directors under Colorado law.

Section 8.3 Disclosure of Basic Information. The Association or its Managing Agent shall provide to the Owners, at least one time per year, a written notice stating: (a) the name of the Association; (b) the name of the Project; (c) the initial date of recording for the Declaration and its reception number or book and page; (d) the name of the Association's Managing Agent, if any; and (e) a valid physical address and telephone number for both the Association and the Managing Agent.

Section 8.4 Turnover of Declarant Control - Deliveries from Declarant to Association. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including without limitation the following items (to the extent they are in Declarant's possession or control):

(a) the original or a certified copy of the recorded Declaration and Map and any amendments thereto, the Articles of Incorporation, the Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) an accounting for Association funds and financial statements, commencing on the date the Association first received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for by or charged to the Association;

(c) the Association funds or control thereof;

(d) all of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, together with an inventory of such property (if any) and the Declarant shall convey all personal property itemized in the inventory to the Association by bill of sale;

(e) a copy, for the non-exclusive use of the Association, of any plans and specifications used in the construction renovation of the Improvements;

(f) all insurance policies then in force, in which the Owners, the Association or its members of the Board of Directors and officers are named as insured Persons;

(g) copies of any certificates of occupancy that may have been issued with respect to the Improvements;

(h) any permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

(i) any written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) a roster of Owners and First Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) employment contracts in which the Association is a contracting party; and

(l) any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the Persons performing the services.

Section 8.5 Disclosure of Financial Information To Owners by Association. Within ninety (90) days after the Association assumes control of the Board of Directors from the Declarant and within ninety (90) days following the end of each fiscal year thereafter, the Association or its Managing Agent shall make the following information available to the Owners by: (1) a posting on an internet web page with accompanying notice of the web address via first class mail or electronic mail; (2) the maintenance of a literature table or binder at the Association's principal place of business; or (3) mail or personal delivery:

(a) the date on which the fiscal year for the Association commences;

(b) the Association's Budget for the current fiscal year;



(c) a list, by Unit type (if applicable), of the association's current Assessments, including both annual and special Assessments;

(d) the Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;

(e) the results of any financial audit or review pursuant to Section 9.10 for the fiscal year immediately preceding the current annual disclosure;

(f) a list of all Association insurance policies which states, with respect to each insurance company: names, policy limits, policy deductibles, additional named insureds and expiration dates of policies listed, including but not limited to, property, general liability, director and officer professional liability and fidelity policies;

(g) the Association's Bylaws, Articles, and any Rules and Regulations adopted by the Board of Directors;

(h) the minutes of the meetings of the Board of Directors and of the Owners for the fiscal year immediately preceding the current annual disclosure; and

(i) the Association's responsible governance policies adopted pursuant to Section 38-33.3-209.5 of the Act.

**Section 8.6 Examination.** The books and records maintained by the Association or the Managing Agent shall be available for examination and copying by any Owner or by any of their duly authorized representatives or requesting Eligible First Mortgagees, in accordance with the Act and the Rules and Regulations; provided that a Roster (as defined in Section 9.8) or any other type of list of Owners, or any part thereof, may not be obtained or used by a Person for any purpose unrelated to an Owner's interest as an Owner without the consent of the Board of Directors.

**Section 8.7 Records.** The Association shall keep, in written form or another form capable of conversion into written form within a reasonable time such books and records as may be necessary to comply with the requirements of the Act and such other records as the Board of Directors may determine from time to time are necessary or desirable. In the event that the Act is amended to alter the records requirements currently set forth in this Section, these Bylaws may be modified accordingly by the Board of Directors.

**Section 8.8 Roster.** The Association shall annually compile a roster of the name and address of each of the Owners and Designated Representatives and the number of votes that each Unit is entitled to (the "**Roster**"). The Association shall provide a copy of the Roster to any Owner in accordance with the Rules and Regulations. Each Owner who requests and receives a copy of the Roster thereby agrees that he or she will not make any commercial use of the Roster and will not distribute a copy of the Roster or any portion thereof to any third party.

**Section 8.9 Disclosure of Information To Owners by Association.** Within ninety (90) days after (1) the Association assumes control of the Board of Directors from the Declarant, and/or (2) the Association's address, designated agent, or management company changes, the Association shall make the following information available to the Owners:

(a) The name of the Association;

(b) The name of the Association's designated agent or management company, if any;

(c) A valid physical street address and telephone number for both the Association and the designated agent or management company, if any;

(d) The name of the common interest community;

(e) The initial date of recording of the Declaration; and

(f) The reception number or book and page for the main document that constitutes the Declaration.

Section 8.10 Audits and Review Reports. The cost of any audit or review shall be a General Common Expense, except as provided in Section 9.4(b) regarding the audit provided as part of the turnover of Declarant Control of the Association. An audit by a certified public accountant utilizing generally accepted auditing standards, or a review using statements on standards for accounting and review services by an independent and qualified person selected by the Board of Directors, shall be done at the discretion of the Board of Directors or upon the request of Owners holding one-third of the of the Total Voting Power; provided that any such request by Owners for an audit shall only be required if the Association then has annual revenues and expenditures of at least \$250,000.00. No later than thirty (30) days following completion, copies of any audit or review conducted pursuant to this Section shall be made available to any Owner who requests a copy.

#### **ARTICLE 9 CORPORATE SEAL**

The Association may have a seal or stamp in circular form having within its form the words: “South Aspen Street PUD North Condominium Association, Inc.”

#### **ARTICLE 10 FISCAL YEAR**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation. The Board of Directors may by amendment to the Bylaws establish a different fiscal year for the Association.

#### **ARTICLE 11 RULES AND REGULATIONS**

The Board of Directors shall have the right to establish, amend, and enforce, from time to time, such Rules and Regulations as the Board of Directors may deem necessary and appropriate for the management, preservation, safety, control, and orderly operation of the Project.

#### **ARTICLE 12 MEMBERSHIP RIGHTS AND PRIVILEGES**

Rights and Privileges of Members. No member shall have the right, without the prior approval of the Board of Directors, to exercise any of the powers or to perform any of the acts delegated to the Board of Directors by these Bylaws or the Declaration. Each member shall have all of the rights and privileges, including but not limited to property rights and easement rights of access over and use and enjoyment of the Common Elements, granted to the members by the Declaration, subject to such limitations as may be imposed in accordance therewith.

Suspension of Rights. The Association shall have the right to suspend the rights and privileges of an Owner as a member of the Association for the period during which any Assessment owed by such Owner remains unpaid and delinquent, all as further described in the Declaration.