



**DECLARATION ESTABLISHING
ANDREAS CIRCLE CONDOMINIUMS**

Timberline Mechanical Contracting, Inc., a Colorado corporation, and Anthony F. Zimmerman, hereinafter referred to as "Declarants," do hereby make the following grants, submissions and declarations:

I

PURPOSE AND PLAN

1.1 Purpose. The purpose of this Declaration is to create a Condominium Common Interest Community pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes, 38-33.3-101, et seq., 1973, as amended.

1.2 Plan. The Declarant is the owner of Lot 32, RIVERLAND - AN INDUSTRIAL PARK, FILING 2, according to the official plat thereof, recorded May 24, 1996, bearing Reception No. 467881 as modified by the Plat Correction recorded in Book 784 at Page 190, County of Gunnison, State of Colorado ("Land") which is shown and described on the Map, filed pursuant to Section 2.15 hereinafter. The existing structure ("Building") located on the Land is a commercial building with related improvements. The location of the Building on the Land and the dimensions thereof are shown on the Map. The Building contains 2 units.

Declarants hereby declare that all of the Land shall be held or sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the Land and be binding on all parties having any right, title or interest in the Land or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof. Additionally, Declarant hereby submits the Land to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.30-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

The Map identifies Units by number. Each Unit shall have appurtenant thereto the undivided interest in the Common Elements and Common Expenses of the Association and a portion of the votes in the association as described on attached **Exhibit A**.

II

DEFINITIONS

2.1 Act. Act means the Colorado Common Interest Ownership Act, Sections 38-33.3-101 et seq., 1973, as amended.

2.2 Association. Association means the Colorado nonprofit corporation formed for management of the Condominium and more specifically described in Article V hereof.

2.3 Building. The Building means the structure on the Land as shown on the Map.

2.4 Common Expenses. Common Expenses are defined in Section 6.1 hereof.

2.5 Condominium. Condominium shall mean the entity created by this Declaration and the Map and shall include all of the Units, Common Elements, the Building and the Land as defined herein and in the Map known as Andreas Circle Condominiums.

2.6 Condominium Unit. Condominium Unit or Unit means the enclosed rooms the boundaries of which consist of the walls, floors and ceilings, together with the interest in the Common Elements appurtenant to such Unit. The Units are diagrammatically shown and numbered on the Map.

2.7 Declarants. Declarants mean Timberline Mechanical Contracting, Inc., a Colorado corporation, and Anthony F. Zimmerman, their representatives, successors or assigns.

2.8 Declaration. Declaration means this document with all Exhibits attached hereto which by this reference are incorporated herein, and all supplements hereto, and the Map, which documents will be recorded in the records of Gunnison County, Colorado pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes, 38-33.3-101, et seq., 1973, as amended.

2.9 Executive Board. Executive Board shall mean the governing board of the Association elected by the Owners to operate, maintain and manage the Condominium.

2.10 First Mortgage or Deed of Trust. A security interest on a unit which has priority over all other security interests on the unit.

2.11 General Common Elements or Common Elements. General Common Elements or Common Elements mean the Land and the Building, including the foundations, floors, ceilings, columns, girders, beams, supports, walls, roof, corridors, flues, stand-pipes, fire hose cabinets, ducts, common entrances and exits, stairs, stairways, heating and air conditioning equipment, basement, yard, service rooms, equipment storage rooms, maintenance rooms, all equipment for central services of electricity, gas, hot and cold water, heating, waste removal and ventilation (including all pipes, ducts, flues, wires, cable and conduits used in connection therewith, whether located in common areas or in Units), pumps, tanks, motors, fans, compressors, boilers and in general all apparatus and installations existing for common use that are located within the Building, and all other parts of the Building and Land necessary or convenient to its existence, maintenance and safety, or normally in common use.

2.12 Land. Land means Lot 32, RIVERLAND - AN INDUSTRIAL PARK, FILING 2, according to the official plat thereof, recorded May 24, 1996, bearing Reception No. 467881 as modified by the Plat Correction recorded in Book 784 at Page 190, County of Gunnison, State of Colorado.

2.13 Limited Common Elements. Limited Common Elements means common elements reserved for the use of less than all of the Units. All such areas are shown on the Map as Limited Common Elements and allocated thereby to the appropriate Unit or Units.

2.14 Managing Agent. Managing Agent shall mean the person or entity employed by the Association to perform the obligations of the Association relative to operation, maintenance and management of the Condominium.

2.15 Map. Map means the survey and drawings prepared by James P. Furey, Colorado L.S. No. 11250, of Andreas Circle Condominiums and filed for record with the Clerk and Recorder of the County of Gunnison, Colorado, on July 7, 1998, Reception No. 484888, which reflects the legal description and location of the Land and all Units.

2.16 Owner. Owner means any person, persons, partnership, corporation, limited liability company or other entity or any combination thereof owning all or part of the fee simple title to a Unit. In the event a unit is owned by more than one person or entity, (a) such Owner shall designate in writing one person or entity and their address to represent such Owner and receive notices and (b) liability for all obligations created by this Declaration shall be joint and several. Upon the failure of an owner to so designate one person or entity, the Association shall be deemed to be the agent for receipt of notices to such Owners.

2.17 Votes and Percentage of Owners. Whenever in this Declaration a vote of Owners is required or permitted, each Owner shall be entitled to the voting percentage set forth on attached Exhibit A. Whenever in this Declaration reference is made to a percentage of Owners such percentage shall mean the aggregate voting percentage of the Owners voting or represented.

III

GRANT AND SUBMISSION

3.1 Grant and Submission. Declarants hereby grant and submit to condominium ownership all of the Land, the Building thereon, and the improvements related or incidental thereto as located upon the Land.

3.2 Conveyance of Fixtures. Declarants hereby grant and submit to condominium ownership all of the equipment, supplies, materials, and other property which are affixed to the Land or the improvements appurtenant thereto.



3.3 Allocated Interests. The undivided interest in the Common Elements, the Common Expense liability and votes in the Association allocated to each Unit are set forth in Exhibit A. The interests allocated to each Unit have been calculated as follows:

- (a) the undivided interest in Common Elements, on the basis of square footage within the project;
- (b) the percentage of liability for project-wide Common Expenses, on the basis of square footage and for building-wide Common Expenses, on the basis of square footage; and
- (c) the number of votes in the Association, on the basis of square footage.

IV

OCCUPATION AND USE

4.1 Division of Condominium into Units. The Condominium is divided into two (2) fee simple estates known as Condominium Units which are shown on the Map.

4.2 Easements for Encroachments of Common Elements and Apartment Units. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction of the Building, or if any such encroachments shall occur hereafter as a result of settling or shifting of the Building, or for any other reason, valid easements shall exist for such encroachments and for the maintenance of the same so long as the Building shall exist. In the event the Building or any part thereof shall be rebuilt, and if encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements exist due to such rebuilding, valid easements shall exist for such encroachments and the maintenance thereof so long as the Building shall exist.

4.3 Conveyance of Condominium Units. Each Unit and the undivided ownership interest in the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit.

4.4 Description of Condominium Units. Every deed, lease, mortgage, trust deed or other instrument shall legally describe a Unit by its number followed by the words "Andreas Circle Condominiums" with further reference to this Declaration and the Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect a Unit, and such Unit's percentage of interest in the Common Elements.

4.5 Exclusive Possession and Use Restriction. Each Owner shall be entitled to exclusive ownership and possession of such Owner's Unit (including any fixtures appurtenant thereto) and exclusive possession and use of the Limited Common Elements allocated to his Unit. Each Owner may use



484889 07/07/1998 04:49P 134

5 of 16 R 81.00 D 0.00 N 0.00 Gunnison County

the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of other Owners. Subject to the provisions of Article XI, below, each Unit may be used or occupied in any manner consistent with the applicable protective covenants and the building and land use regulations of Gunnison County, Colorado, or other authority having jurisdiction thereof.

4.6 Right of Access and Emergency Repairs. The Association shall have the right of access to each Unit and its appurtenant Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of Common Elements, or at any time deemed necessary for the making of emergency repairs to prevent damage to the Common Elements or to the Unit or to another Unit.

4.7 No Partition. No Owner shall bring an action for partition of his Unit or of the Common Elements, or of the Land.

4.8 Right to Mortgage. Each Owner shall have the right from time to time to encumber his interest in his Unit by deed of trust, mortgage or other security instrument.

4.9 Combination of Units. In the event that one Owner shall own both Units, such Owner shall have the right, subject to the prior, written approval of the Executive Board, to combine such Units into one area and to create entries, door openings and stairways between such Units, so long as such changes do not affect load-bearing walls or pipes, conduits, ducts, shafts and wiring for the utility services of the Building.

V

ANDREAS CIRCLE CONDOMINIUMS ASSOCIATION, INC.

5.1 Owners Association. The administration of the Condominium shall be governed by this Declaration and the Articles of Incorporation and the Bylaws of Andreas Circle Condominiums Association, Inc. (Association), a Colorado nonprofit corporation. The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary or convenient to manage the business and affairs of the Condominium, including, without limitation, the power to adopt rules and regulations which are not inconsistent with this Declaration. An Owner of a Condominium Unit shall automatically become a member of the Association and shall remain a member for the period of his ownership.

5.2 Association Management. The Association shall conduct the general management, operation and maintenance of the Condominium and the Units and the enforcement of the provisions of this Declaration and of the Articles and Bylaws of the Association and rules and regulations adopted thereunder. The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Owners of Units to which at least 67 percent of the votes in the Association are allocated, at a meeting called for that purpose.



5.3 Association Budget. Within thirty days after adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise, deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the summary. Unless at that meeting a majority of all Unit Owners or any larger percentage specified in the Declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

5.4 Notice to Unit Owners. Notice of matters affecting the Association, the Common Elements or other aspects of the project shall be given to Unit Owners by the Association or other Unit Owners in writing addressed to each Unit Owner at the address provided to the Association by each Unit Owner. If a Unit Owner has failed to provide an address, the Association shall use the address set forth in the deed or other instrument of conveyance recorded in the Gunnison County records by which the Unit Owner acquired title.

VI

COMMON EXPENSES

6.1 Common Expenses. The costs and expenses (Common Expenses) of managing, operating and maintaining the Condominium by the Association shall be personal obligations to be borne by all Owners. Common Expenses shall be used for the purpose of promoting the health, safety and welfare of the occupants of the project, including the overhead expenses of the Association, costs of maintenance, repair and operation of the Common Elements, taxes and special assessments unless separately assessed, insurance premiums for insurance coverage as deemed desirable or necessary by the Association, utility charges for common elements including gas, electricity, water, sewer, trash and garbage collection, guard service, burglar alarm service, landscape maintenance and snow removal, janitorial service, legal and accounting fees, management fees, common element charges and the creation of a reasonable contingency or other reserve or surplus funds. The Association shall be ultimately responsible for the payment of all water, sewer and trash charges levied on the individual units and any common elements. The Owners of Units in each Building shall be exclusively responsible for approving and paying for all Building maintenance expenses related to such Building.

6.2 Creation of Association Lien and Personal Obligation to pay Common Expense Assessments. Declarants, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association Common Expense assessments. Such assessments, including fees, charges, late charges, attorneys fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner at the time when the assessment or other charges became or fell due. The personal obligation to



484889 07/07/1998 04:49P 134
7 of 16 R 81.00 D 0.00 N 0.00 Gunnison County

pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by such successor in title.

6.3 Assessment. Initially, Common Expenses shall be estimated by the Association for the period from the date that the Condominium was created to the end of the then calendar year and each Owner shall be assessed his pro rata share thereof at such date. Thereafter Common Expenses shall be estimated by the Association annually for the ensuing calendar year and each Owner shall be assessed for his pro rata share thereof in advance of the commencement of each such year. The assessments shall be made pro rata according to each Owner's percentage of interest as set forth herein. The Association may establish any reasonable system for periodic collection of assessments, in advance or arrears, as deemed desirable. At the end of each calendar year the Association shall determine actual expenses and either assess each Owner or credit him against the assessment for the next ensuing calendar year, as the case may be, for his share of the difference between estimated and actual expenses. The failure of the Association to fix the assessment for any assessment period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the Common Expenses.

6.4 Nonpayment of Assessments and Lien. All sums assessed but unpaid for the Common Expenses chargeable to any Owner shall constitute a lien on such Owner's Unit, superior to all other liens and encumbrances, except for: (i) liens for real estate taxes and other governmental assessments or charges against the unit; (ii) liens and encumbrances recorded before the recordation of this Declaration; and (iii) the lien of a first mortgage or deed of trust, provided, however, that the lien for assessments shall be prior to the lien of a first mortgage or deed of trust to the extent of:

(a) An amount equal to the common expense assessments based on a periodic budget adopted by the association which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action to enforce the lien, but in no event shall the priority accorded under this subparagraph (a) to such lien exceed one hundred fifty percent of the average monthly assessment during the immediately preceding fiscal year multiplied by six;

(b) Attorneys fees and costs being incurred in an action to enforce the lien.

6.5 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate of 18% per year or at such other rate as determined by the Executive Board and the Association may assess a late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

6.6 Working Fund. The Association or Declarants shall require the first Owner of each Unit (other than Declarants) to make a non-refundable payment to the Association in an amount equal to one-sixth of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the sale by Declarants of each Unit, as aforesaid, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his transferee for any unused portion of the aforesaid working fund.

6.7 Statement of Assessments. The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the association, the Executive Board, and every unit owner. If no statement is furnished to the inquiring party, then the association shall have no right to assert a priority lien upon the unit for unpaid assessments which were due as of the date of the request.

VII

MAINTENANCE AND ALTERATIONS

7.1 Maintenance. Responsibility for the maintenance of the Condominium shall be as follows:

(a) **By the Owner.** The Owner shall maintain and keep in good repair the interior surfaces of walls, ceilings and floors (including carpeting, tile, wallpaper, paint or other covering) as well as all fixtures and appliances, including baseboard heating elements, located within such Owner's Unit and any Limited Common Elements allocated to such Unit. An Owner shall not be responsible for repairs occasioned by damage as defined in Article IX hereinafter, unless such damage is due to the act or negligence of the Owner, his guests, invitees or tenants.

(b) **By the Association.** The Association shall maintain and keep in good repair all that part of the Building and related improvements not required to be maintained and kept in good repair by an Owner.

7.2 Alterations. No Owner shall alter, modify, remove or destroy any Common Element without the prior written consent of the Executive Board, except for room partitions and dividers located within a Unit which are not load-bearing and which do not contain any utility service lines or ducts. All alterations made to the Common Elements must be performed under the supervision of an architect or other expert approved by the Association, with approval of any governmental authority having jurisdiction thereof, and performed in a good and workmanlike manner. Alteration work shall be



completed as rapidly as possible and in such a manner as to not interfere with the use and occupancy of any other Unit and of the Common Elements of the Building. An Owner owning two or more Units adjacent to each other on the same floor of the Building or on adjacent floors of the Building shall have the right to combine such Units by common doorways or stairs and stairways, provided, however, that the plans, specifications and performance of work in combining such Units must be approved in writing by the Association. In like manner, the relocation of any balcony must be approved in writing by the Association. No balcony on any floor of the Building may be enclosed in any fashion other than as originally constructed, without such approval.

VIII

INSURANCE

8.1 Insurance Coverage. The Association shall obtain and pay, as a Common Expense, the premium for insurance on the Building and related improvements in an amount equal to the maximum insurable replacement value thereof, affording protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as may from time to time be customarily insured against with respect to buildings similar in construction, location and use as the Building, including by way of example, vandalism and malicious mischief. The Association shall determine at least annually the replacement value of the Building and in so doing may employ such experts as it may deem necessary. The Association shall also obtain and pay, as a Common Expense, the premiums for public liability and, if applicable, workmen's compensation insurance and may obtain and pay the premiums for such other types of insurance as it deems necessary or desirable. Each Owner may obtain and pay the premium for insurance coverage of the contents of his Unit in his discretion. Each Owner's share of the Common Insurance Expense shall be computed by the Association's insurance underwriter, according to the risk and value assigned to each Unit by such underwriter, and shall not be computed by the Unit's participation in Common Expenses assigned and set forth in this Declaration. Such Common Insurance Expense shall be a Common Expense under Article VI, notwithstanding the differing method of apportionment thereof between the Owners. In no event shall the insurance coverage be less than that specified in Section 313 of the Act.

8.2 Certificates of Insurance. A certificate or memorandum of the insurance coverage maintained by the Association shall be furnished by the Association upon request to any Owner or mortgagee of a Unit.

IX

DAMAGE AND REPAIR

9.1 Repair or Reconstruction after Damage. For the purposes of this Article IX total damage is defined as such damage as to render, in the judgment of the Association, all the Units in the Building untenable. Any damage less than total damage as so defined is partial damage for the purposes of this Article IX. Repair or reconstruction as used in this Article IX

means restoration of improvements to substantially the same condition which they existed prior to the damage, with each Unit and the Common Elements having substantially the same horizontal and vertical boundaries as before.

9.2 Insurance Proceeds Sufficient to Repair. In the event that proceeds from insurance coverage are sufficient to cover the cost of repair or reconstruction after damage to a Building or any part thereof, then such repair or reconstruction shall be promptly performed by the Association, as attorney-in-fact for the Owners.

9.3 Insurance Proceeds Insufficient to Repair. If insurance proceeds are insufficient to repair the damaged Building, the following provisions shall govern:

(a) **Partial Damage.** A partial damage to a Building shall be repaired as promptly as possible under the direction of the Association, and any cost of such repair in excess of insurance proceeds shall be assessed against all Owners of the project as a Common Expense.

(b) **Total Damage.** In the event of total damage to a Building a special meeting of the Owners of units in the project shall be held for the purpose of determining whether the reconstruction should be done. If sixty-seven percent (67%) of the Owners in the project vote in favor of reconstruction, then all Owners shall be bound and the cost of reconstruction in excess of insurance proceeds shall be assessed against all Owners as a Common Expense. If sixty-seven percent of the Owners do not vote in favor of reconstruction, then the Association shall forthwith sell the entire Condominium Property as attorney-in-fact for the Owners. In such case the insurance proceeds, if any, payable as a result of the damage shall be collected by the Association and after payment of costs of collection thereof and of other outstanding obligations and charges owed by the Association as a result of the damage, the Association shall disburse the insurance proceeds and the proceeds of sale to the Owners in accordance with each Owner's percentage interest in the Common Elements. Such proceeds as may be necessary to satisfy any lien, mortgage or deed of trust against a Unit may be paid out of such Owner's share of proceeds.

9.4 Power of Attorney. This Declaration hereby appoints the Association as the irrevocable attorney-in-fact for all Owners to deal with the Condominium Property upon its damage and repair.

X

FIRST RIGHT OF REFUSAL

10.1 Right of First Refusal. In the event any Owner of a Condominium Unit other than the Declarants shall desire to sell the same, and shall have received a bona fide offer therefor from a prospective purchaser, the selling Owner shall give written notice thereof to the other remaining Owner together with a copy of such offer and the terms thereof. The remaining Owner shall have the right to purchase the subject Unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase is given to the selling Owner, or his agent, together

with a matching down payment or deposit during the twenty day period immediately following the receipt of the notice of the offer to purchase.

In the event any Owner shall attempt to sell his Condominium Unit without affording to the other Owner the right of first refusal herein provided, such sale or lease shall be voidable and may be voided by a certificate of non-compliance of the Association duly recorded in the office of the Clerk and Recorder of Gunnison County, Colorado. However, in the event the Association has not recorded such a certificate of non-compliance within one year from the date of recording in the case of a deed delivered in violation of this paragraph, such a conveyance shall be conclusively deemed to have been made in compliance with this paragraph and no longer voidable.

In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his Condominium Unit to a lease, trust deed, mortgage or security instrument.

The failure or refusal by an Owner to exercise the right to so purchase shall not constitute or be deemed to be a waiver of such right to purchase when an Owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

The right of first refusal as provided herein, shall extend and run for the lives of Anthony F. Zimmerman and Ronald Chlipala and their issue, plus 21 years.

Except as is otherwise provided in Paragraph 10.2, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each grantor of a Condominium Unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

10.2 Exemption from Right of First Refusal. In the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Paragraph 10.1, and the purchaser, or grantee under such deed in lieu of foreclosure of such Condominium Unit shall thereupon and thereafter be subject to the provisions of this Declaration and the Bylaws of any Association of Unit Owners. If the purchaser following such foreclosure sale, or grantee under deed given in lieu of such foreclosure, shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the Condominium Unit free and clear of the provisions of Paragraph 10.1, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The following transfers are also exempt from the provisions of paragraph 10.1:

(a) Transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s);

(b) Transfer of a deceased's interest to a devisee or devisees by will or his heirs at law under intestacy laws;

(c) Transfer of an Owner's interest by treasurer's deed pursuant to a sale for delinquent taxes;

(d) Transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or to a person or persons becoming partners; a transfer of all or part of the partner's or partners' interest between one or more partners and/or to persons becoming partners;

(e) Transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution. A transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least fifty percent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the Condominium Unit;

(f) Transfer of a limited liability company's interest to the persons formerly owning the membership interests of the limited liability company as the result of a dissolution. A transfer to the resulting entity following a merger or consolidation; provided, however, that at least fifty percent of the membership interests of the resulting entity is owned by the members of the limited liability company formerly owning the Condominium Unit;

(g) Transfer by gift;

(h) Transfer by Declarants herein.

If the Owner of a Condominium Unit can establish to the reasonable satisfaction of the Association that a proposed transfer is not a sale, then such transfer shall not be subject to the provisions of Paragraph 10.1.

10.3 Certificate of Compliance - Right of First Refusal. Upon written request of any prospective transferee, purchaser, tenant or any existing or prospective Mortgagee of any Condominium Unit, the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing:

(a) With respect to a proposed sale under Paragraph 10.1, that proper notice was given by the selling Owner and that the remaining Owner did not elect to exercise its option to purchase;

(b) With respect to a deed to a first Mortgagee or its nominee in lieu of foreclosure, and a deed from such first Mortgagee or its nominee, pursuant to Paragraph 10.2, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 10.1.

Such certificate shall be conclusive evidence of the facts contained therein.

XI

RESTRICTIONS ON USE AND OCCUPANCY

11.1 Use and Occupancy Restrictions. The following use restrictions apply to all Units and to the Common Elements:

(a) Each Unit may be used or occupied in any manner consistent with the Protective Covenants of Riverland Industrial Park;

(b) Owners of dogs shall:

(i) Except for a brief warning bark, not allow their dogs to bark or otherwise disturb, threaten, scare, injure or bother any person or other animal;

(ii) Immediately clean up their dog's waste; and

(iii) At all times restrain their dogs by leash or voice command.

(c) Each Unit Owner shall be entitled to use 50% of the parking spaces on the Land.

XII

RESTRICTIONS ON ALIENATION

12.1 Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes. All leases and rental agreements shall be in writing and subject to the reasonable requirements of the Executive Board.

XIII

EXPANSION

13.1 Reservation of Right to Expand. Declarants expressly waive their right to expand the Condominium project onto other land.

13.2 The Owner of each Unit shall be entitled to enlarge such Unit within the existing Building footprint on condition that the total floor area in such Unit does not exceed 2,250 square feet; provided however, that such enlargement shall not alter the Table of Interests attached hereto as **Exhibit A**.

13.3 No Owner shall have the right to utilize any portion of such Owner's Unit or any other part of the Condominium project for residential purposes without the prior written consent of the other Unit Owner.

XIV

EASEMENTS AND LICENSES

14.1 Recording Data. All easements and licenses to which the Condominium is presently subject are shown or listed on the Map.

XV

MISCELLANEOUS PROVISIONS

15.1 Separate Tax Assessment. Declarants shall advise the Assessor of Gunnison County, Colorado, of the creation of the Condominium so that each Unit shall be deemed a separate parcel of real property and subject to separate assessment and taxation.

15.2 Compliance with Declaration. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, By-Laws, rules, regulations and resolutions of the Association consistent with this Declaration and any management agreement entered into by the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association in behalf of the Owners, or by an aggrieved Owner.

15.3 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, word or section, or the application thereof in any circumstance by invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, word or section in any other circumstances shall not be affected thereby.

15.4 Amendment of Declaration. This Declaration or the Map may not be amended except by the vote of at least sixty-seven percent (67%) of all Owners. Such amendment need not be approved by the holders of any Mortgages or Deeds of Trust. No amendment shall be effective until placed on record in the office of the Clerk and Recorder of the County of Gunnison, Colorado.

15.5 Attorneys' Fees. It is agreed that if any action is brought in a court of law as to the enforcement or interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be entitled to recover all reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

15.6 Binding Agreement. This Declaration shall bind and inure to the benefit of the parties hereto and their respective representatives, heirs, successors and assigns.



484889 07/07/1998 04:49P 134
16 of 16 R 81.00 D 0.00 N 0.00 Gunnison County

EXHIBIT A

TABLE OF INTERESTS

<u>Unit No.</u>	<u>Percentage share of Common Elements</u>	<u>Percentage share of Building Common Expenses</u>	<u>Percentage share of project Common Expenses</u>	<u>Percentage Vote in the affairs of Association</u>
1	50.0	50.0	50.0	50.0
2	<u>50.0</u>	<u>50.0</u>	<u>50.0</u>	<u>50.0</u>
Total	100.0	100.0	100.0	100.0