

2)



**FOURTH SUPPLEMENT TO  
CONDOMINIUM DECLARATION  
FOR  
EAGLE RIVER COMMERCIAL CENTER**

8/41-

This Fourth Supplement to Condominium Declaration for Eagle River Commercial Center (the "Fourth Supplement to Declaration") is made as of December 12<sup>th</sup>, 2006, by Eagle River Development, LLC, a Colorado limited liability company (the "Declarant").

**WITNESSETH:**

WHEREAS, Declarant has heretofore caused to be recorded a Condominium Declaration for Eagle River Commercial Center on August 30, 1999, at Reception No. 707025, as amended and supplemented from time to time (collectively, the "Declaration") in the Eagle County, Colorado real property records; and

WHEREAS, in Article 19 of the Declaration, Declarant expressly reserved for itself the right to expand the Property (all capitalized terms used herein shall have the meanings as defined in the Declaration, unless otherwise defined or modified herein) by annexing and submitting all or a portion of the Expansion Property to the terms and conditions of the Declaration and creating additional Units and/or Common Elements by one or more duly recorded Supplemental Declarations and Supplemental Maps; and

WHEREAS, Declarant wishes to submit to the Property the property described in Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Phase 5 Property"), upon which Declarant has constructed two (2) additional Buildings, as follows: Building 4 (referred to herein as "Building 4"), containing eleven (11) Units, numbered 401 through 411, together with Common Elements (collectively, the "Building 4 Improvements"), and Building 6 (referred to herein as "Building 6"), containing eight (8) Units, numbered 601 through 608, together with Common Elements (the "Building 6 Improvements") (the Building 4 Improvements and the Building 6 Improvements being collectively referred to herein as the "Phase 5 Improvements"), as shown on that certain Condominium Map, Eagle River Commercial Center - Phase V, recorded contemporaneously herewith in the real property records of Eagle County, Colorado (the "Phase 5 Map"); and

WHEREAS, Declarant wishes to reserve the right for itself to further expand the Property in the future to include additional Units and to further expand the Common Elements.

NOW, THEREFORE, Declarant hereby declares that both the Property and the Phase 5 Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements and the covenants, conditions, restrictions and easements contained in the Declaration, which are for the purpose of protecting the value and desirability of the Property and the Phase 5 Property and which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title, or interest in all or any part of the Property or the Phase 5 Property.

1. General. The terms and provisions contained in this Fourth Supplement to Declaration shall be in addition and supplemental to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall be applicable to this Fourth Supplement to Declaration and to the Phase 5 Property. The definitions used in the Declaration are hereby expanded and shall hereafter and in the Declaration be deemed to encompass and refer to the Property as defined in the Declaration and the Phase 5 Property as defined herein. For example, "Unit" shall mean the Units described in the Declaration plus the additional Units described herein and on the Phase 5 Map. Reference to the "Property" shall mean both the Property and the Phase 5 Property, reference to "Common Elements" shall mean the Common Elements described in the Declaration plus the additional Common Elements depicted on the Phase 5 Map and reference to the "Declaration" shall mean the Declaration as supplemented by this Fourth Supplement to Declaration. All ownership and other rights, obligations and liabilities of Owners of original Units are hereby modified as described herein.

2. Annexation of Phase 5 Property. The Phase 5 Property is hereby and, upon the recording of this Fourth Supplement to Declaration and the Phase 5 Map shall be, annexed into the Property, and each Unit in the Phase 5 Improvements shall be subject to all of the covenants, conditions, restrictions and easements as contained in the Declaration.

3. Effect of Expansion. Assessments by the Association as provided in Article 8 of the Declaration, upon the recording of this Fourth Supplement to Declaration and the Phase 5 Map, shall be divided among the Units according to the interest allocations and formula set forth on Exhibit B attached hereto and incorporated herein by reference (whether such Unit is part of the Phase 5 Improvements or part of the original definition of the Property), and Exhibit B to the Declaration is hereby amended in its entirety to read in accordance with Exhibit B hereto. Notwithstanding any inclusion of additional Units under the Declaration, each Owner (regardless of whether such Owner is the owner of a Unit which is part of the Phase 5 Improvements or part of the prior definition of the Property) shall remain fully liable with respect to such Owner's obligation for the payment of the Common Expenses of the Association, including the expenses for any new Common Elements, costs and fees, if any. The recording of this Fourth Supplement to Declaration shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

4. Building 6 Assessment Surcharge. In view of the additional services and benefits available to Units located within Building 6, vis-a-vis other Units in the Eagle River Commercial Center, including, without limitation, separate restroom facilities and increased parking, all Units located within Building 6 shall be assessed, in addition to the regular Assessments as determined in accordance with the Declaration, an amount equal to twenty-five percent (25%) of such regular Assessment. Such additional Assessment will be considered an Assessment for all purposes in accordance with the Declaration, including, without limitation, the Association's rights and remedies in the event of delinquency as set forth in Article 8 of the Declaration.

5. Unit Remodels. Section 9.1 of the Declaration currently states, in part, that "an Owner of a Unit shall not be permitted to improve or alter its Unit if such alteration or improvement in any way impacts a Common Element without compliance with all procedures


and rules of the Association.” For purposes of clarification and not of limitation, it is expressly deemed an impact on the Common Elements should any improvement or alteration of a Unit (a) result in an increase the number of parking spaces required for such Unit as determined pursuant to the requirements of the Town of Gypsum, (b) increase the square footage of the Unit, or (c) alter in any manner the structural, fire/safety, ventilation or mechanical components of the Unit, which components must be shown to be safe and without impact to Common Elements or neighboring Units. In determining whether an increase in required parking has resulted from a particular improvement or alteration, the Association shall compare the parking requirement for the Unit as improved/altered to the parking requirement that existed at the time of recording of the Declaration or Supplemental Declaration applicable to the Unit (e.g., for “Mixed Use” Units, two-thirds of the Unit designated for storage and one-third for office use). An Owner proposing any improvement or alteration to a Unit which in any way impacts a Common Element (including, without limitation, those described in this Section 5) must first submit an application to the Executive Board and secure the approval of the Executive Board, which approval shall be granted or denied in the sole discretion of the Executive Board. Approval by the Executive Board shall be deemed to have been conclusively given if the Executive Board has not responded to an application within thirty (30) days after submission of all information and materials required to complete an application under the applicable rules and regulations of the Association. After receiving the approval of the Executive Board, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by any governmental or quasi-governmental body having jurisdiction over the Property.

6. Reservation. Declarant hereby reserves the right for itself to further expand the Property in the future to include additional Units and to expand the Common Elements.

7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

8. Conflicts Between Documents. In case of conflict between the Declaration, as supplemented hereby, and the articles of incorporation or bylaws of the Association, the Declaration as supplemented shall control.

EAGLE RIVER DEVELOPMENT, LLC, a  
Colorado limited liability company

By:   
Name: Robert Warner, Jr.  
Title: Manager

STATE OF COLORADO            )  
  )ss.  
COUNTY OF EAGLE            )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of December, 2006, by Robert Warner, Jr. as Manager of Eagle River Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: MY COMMISSION EXPIRES 12/13/2008



Monica M. Hethcote  
Notary Public

G:\Clients\Warner-0049\Warner-0049.9901\supp4-ERComm\Cntr 1.cln.doc

**EXHIBIT A**

**Legal Description**

Building 4 and Building 6 and Common Elements (depicted as "C.E.") as shown on the Condominium Map, Eagle River Commercial Center-Phase 5, recorded \_\_\_\_\_, 2006 at Reception No. \_\_\_\_\_, Eagle County, Colorado.

**EXHIBIT B**

**OWNERS' INTERESTS IN COMMON ELEMENTS**

<u>Unit No.*</u>	<u>Area</u>	<u>Use</u>	<u>Percentage Interest in Common Elements Appurtenant to the Unit**</u>
101	260	Storage Unit	0.28877%
102	280	Storage Unit	0.31098%
103	280	Storage Unit	0.31098%
104	130	Mgmt. Office	0.14439%
105	1200	Residential Unit	1.33279%
106	1150	Storage Unit	1.27725%
107	1440	Storage Unit	1.59934%
108	1440	Storage Unit	1.59934%
109	1440	Storage Unit	1.59934%
110	1460	Storage Unit	1.62156%
111	1460	Storage Unit	1.62156%
112	1460	Storage Unit	1.62156%
113	1800	Residential Unit	1.99918%
114	410	Storage Unit	0.45537%
115	570	Storage Unit	0.63307%
116	570	Storage Unit	0.63307%
201	668	Storage Unit	0.74192%
202	665	Storage Unit	0.73859%
203	668	Storage Unit	0.74192%
204	1460	Storage Unit	1.62156%
205	1460	Storage Unit	1.62156%
206	1460	Storage Unit	1.62156%
207	1490	Storage Unit	1.65488%
301	1450	Storage Unit	1.61045%
302	1470	Storage Unit	1.63266%
303	1470	Storage Unit	1.63266%
304	1460	Storage Unit	1.62156%
305	660	Storage Unit	0.73303%
306	670	Storage Unit	0.74414%
307	670	Storage Unit	0.74414%
308	680	Storage Unit	0.75525%
309	670	Storage Unit	0.74414%
310	660	Storage Unit	0.73303%
311	1460	Storage Unit	1.62156%

312	1460	Storage Unit	1.62156%
313	1460	Storage Unit	1.62156%
314	1460	Storage Unit	1.62156%
401	747	Storage Unit	0.82966%
402	953	Storage Unit	1.05845%
403	1749	Storage Unit	1.94253%
404	1443	Storage Unit	1.60267%
405	1443	Storage Unit	1.60267%
406	1749	Storage Unit	1.94253%
407	953	Storage Unit	1.05845%
408	953	Storage Unit	1.05845%
409	953	Storage Unit	1.05845%
410	762	Storage Unit	0.84632%
411	747	Storage Unit	0.82966%
501	1370	Multi Use Unit	1.52160%
502	1370	Multi Use Unit	1.52160%
503	1370	Multi Use Unit	1.52160%
504	1370	Multi Use Unit	1.52160%
505	1370	Multi Use Unit	1.52160%
506	1370	Multi Use Unit	1.52160%
507	1370	Multi Use Unit	1.52160%
508	1370	Multi Use Unit	1.52160%
601	1296	Multi Use Unit	1.43941%
602	1336	Multi Use Unit	1.48383%
603	1336	Multi Use Unit	1.48383%
604	1336	Multi Use Unit	1.48383%
605	1336	Multi Use Unit	1.48383%
606	1336	Multi Use Unit	1.48383%
607	1336	Multi Use Unit	1.48383%
608	1310	Multi Use Unit	1.45496%
801	1494	Multi Use Unit	1.65932%
802	6568	Multi Use Unit	7.29478%
803	2717	Multi Use Unit	3.01765%
804	2405	Multi Use Unit	2.67112%
805	3898	Multi Use Unit	4.32933%
<b>Total:</b>	<b>90037</b>		<b>100.00000%</b>

\*As depicted on the Condominium Map, Eagle River Commercial Center, Phase 1, recorded at Reception No. 705354, Eagle County, Colorado, with respect to Units 101 through 116, inclusive, and Units 201 through 207, inclusive, and on the Phase 2 Map recorded at Reception No. 737613, Eagle County, Colorado with respect to Units 301 through 314, inclusive, and on the Phase 3 Map recorded at Reception No. 758467, Eagle County, Colorado with respect to Units 501 through 508, inclusive, and on the Phase 4 Map recorded at Reception No.200623089, Eagle County Colorado with respect to Units 801 through 805, inclusive, and on the Phase 5 Map with respect to Units 401 through 411, inclusive and Units 601 through 608, inclusive.

\*\* The formula for computing the percentage undivided interests in the Common Elements is a Unit's square footage as a percentage of the aggregate square footage of all Units, which percentages herein are conclusive and binding on all Owners.