

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
SENECA CENTER CONDOMINIUMS

NOVEMBER 13, 2002

## TABLE OF CONTENTS

I.	Preamble .....	1
II.	Definitions .....	2
	2.1 General .....	2
	2.2 Act .....	2
	2.3 Articles of Incorporation .....	2
	2.4 Association .....	2
	2.5 Bylaws .....	2
	2.6 Common Elements .....	2
	2.6.1 General Common Elements .....	2
	2.6.2 Limited Common Elements .....	2
	2.7 Condominium Area .....	3
	2.8 Condominium Map .....	3
	2.9 Condominium Project .....	3
	2.10 Condominium Unit .....	3
	2.11 Declarant .....	3
	2.12 Declaration .....	3
	2.13 Executive Board .....	3
	2.14 Member .....	3
	2.15 Mortgage .....	3
	2.16 Mortgagee .....	4
	2.17 Owner .....	4
	2.18 Record, File, Recordation, or Recorded .....	4
	2.19 Rules and Regulations .....	4
	2.20 Other .....	4
III.	The Condominium .....	4
	3.1 Submission to the Colorado Common Interest Ownership Act .....	4
	3.2 Name of Condominium .....	4
	3.3 Description of Unit .....	4
IV.	The Association .....	4
	4.1 Authority .....	4
	4.2 Powers .....	5
	4.3 Insurance .....	5
	4.4 Easements .....	5
	4.5 Declarant Control .....	5
V.	Units .....	5
	5.1 Number of Units .....	5
	5.2 Identification of Units .....	5
	5.3 Boundaries of Units .....	5
VI.	Common Elements and Limited Common Elements .....	5
	6.1 Undivided Interests .....	5
	6.2 Access to Common Elements and Limited Common Elements .....	6
	6.3 Appurtenant Limited Common Elements .....	6
VII.	Use and Other Restrictions and Obligations .....	6
	7.1 Use. ....	6
	7.2 Prohibitions .....	6
	7.3 Prohibitions Without Consent of Association .....	7
	7.4 Parking Areas .....	8
	7.5 Trash and Trash Removal .....	8

7.6	Conformance with Rules and Regulations	8
7.7	Fines	8
7.8	Owner Improvements	8
VIII.	Assessments	9
8.1	Assessments.	9
8.2	Basis	9
8.2.1	Determination and Levy	9
8.2.2	Basis of Determination	9
8.2.3	Individual Assessments	9
8.3	Nonexception	10
8.4	Delinquency and Acceleration	10
8.5	Creation and Release of lien	10
8.6	Enforcement of Liens	10
8.7	Sale - Effect	11
8.8	Payment on Encumbrances	11
IX	Utilities	11
9.1	Assessments	11
9.2	Minimum Temperature	11
9.3	Sewer District Requirements	12
X.	Maintenance	12
10.1	Unit Maintenance	12
10.2	Limited Common Elements	12
10.3	Maintenance of Common Elements	12
XI.	Allocated Interests and Easements	13
11.1	Voting	13
11.2	Determination of Allocated Interests	13
11.3	Easements and Licenses in this Declaration	13
XII.	General Provisions	13
12.1	Enforcement	13
12.2	Indemnification	13
12.3	Severability	14
12.4	Conflict	14
12.5	Duration	14
12.6	Amendment	14
12.7	Section References	14
12.8	Notice	14

**Exhibits**

- A. Determination of Allocated Interests
- B. Easements and Licenses

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR  
SENECA CENTER CONDOMINIUMS**

This Declaration is made by Schrader Properties, LLC, Sierra Resources Corporation and BLJ, Inc. (hereinafter referred to as "Declarant") on this \_\_\_\_ day of November, 2002. First National Bank as the lienholder has executed this Declaration evidencing its consent to condominiumizing the property owned by Declarant and subjecting the property to the Declaration.

W I T N E S S E T H:

**Article I. Preamble**

1.1 Declarant is the owner of that certain real property located in the City of Fort Collins, County of Larimer, State of Colorado, more particularly described as Lots 1 and 2, Overlook Fifth Filing, P.U.D. (Overlook Fifth Filing, P.U.D. is sometimes referred to herein as the "Subdivision" and Lot 1 of the Subdivision is herein sometimes referred to as "Lot 1" or "Building 1"; and Lot 2 of the Subdivision is herein sometimes referred to as "Lot 2" or "Building 2"), a Subdivision in the City of Fort Collins, according to the plat thereof recorded in the office of the Larimer County Clerk and Recorder on September 21, 2000 at Reception No. 2000065060.

The "Condominium Area" shall mean Lot 1 and Building 1. All or any portion of Lot 2 may be made subject to this Declaration at times in the future as provided for herein and if subjected, such Lot 2 (and Building 2) or portions of Lot 2 shall be included as part of the Condominium Area.

1.2 Lot 1 is improved with a commercial building containing six Commercial Condominium Office/Retail Units which will be separately owned as Condominium Units pursuant to the Colorado Common Interest Ownership Act, §38-33.3-101 *et seq.*, Colorado Revised Statutes as it may be amended from time to time (the "Act"). In addition, Lot 1 and Lot 2 have been improved with parking facilities, including paved access-ways, medians, walkways, landscaped areas and other amenities for the benefit of the Condominium Project. **Lot 1 and Lot 2 are subject to cross parking easements.**

1.3 Declarant also may construct a condominium building on Lot 2 containing Commercial Office/Retail Units and **which building** also includes Condominium Residential Units.

1.4 This Declaration establishes the plan for the individual ownership of the Condominium Units now constructed and to be constructed, and the co-ownership as tenants in common of all of the remainder of the Condominium Area and the improvements thereon. It establishes the rights and obligations of the Owners of the Condominium Units, provides for maintenance of the Common Elements, defines restrictions relating to the Condominium Area, establishes a Condominium Association, **grants Declarant certain Development Rights and Special Declarant Rights, including the rights to subdivide any Unit still owned by Declarant (including conversion of portions of unsold units into common areas) and reallocate interests provided for herein and including the right to add Lot 2 or portions of Lot 2 and Building 2 to the Condominium Area and to subject such property to the Declaration, to reallocate interests provided for herein,** and otherwise provides for the creation of the Condominium Project and the continued maintenance thereof under the Act.

1.5 The plan hereby established is declared to be for the benefit of the Condominium Area and the Owners thereof, their heirs, devisees, personal representatives, successors and assigns. All of the Condominium Area is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, easements, conditions, and covenants herein set forth, all of which are declared to be in furtherance of the plan for the protection, subdivision, maintenance, improvement and sale of the Condominium Area and for the purpose of enhancing the value, desirability and attractiveness of the Condominium Project.

## Article II. Definitions.

2.1 General. All applicable portions of definitions as contained in the Act shall apply to this Declaration except as particularly modified or changed by individual definitions hereinafter contained. The following sections of this Article define words and phrases and such words and phrases when used in this Declaration shall have the meanings hereinafter set forth.

2.2 Act. Act shall mean the Colorado Common Interest Ownership Act as it may be amended from time to time. References herein to sections (e.g. § 303) are to section of the Act. Except to the extent permitted by the Act, no provision in this Declaration is intended to contradict the requirements of the Act, and this Declaration shall be interpreted in accordance with such intent.

2.3 Articles of Incorporation. Articles of Incorporation or Articles shall mean the Articles of Incorporation of the Association filed or to be filed in the office of the Secretary of State of the State of Colorado.

2.4 Association. Association shall mean and refer to the Seneca Center Condominium Association.

2.5 Bylaws. Bylaws shall mean the Bylaws adopted by the Association as amended from time to time.

2.6 Common Elements. Common Elements means the entire Condominium Project, except for the individual air space Condominium Units. Utility lines and facilities that serve more than a single Unit, regardless of where they are located, are Common Elements, including Common Elements which may be subsequently defined in the event Declarant subjects Lot 2, or portions of Lot 2, to the Declaration.

2.6.1 General Common Elements. General Common Elements means all Common Elements which are not limited Common Elements.

2.6.2 Limited Common Elements. Limited Common Elements are those portions of the Common Elements which are reserved for the exclusive use of an Owner of a Condominium Unit or limited to and reserved for the common use of more than one but fewer than all of the Condominium Unit Owners, all as defined in this Declaration or as shown on a supplement to this Declaration made by the Declarant as provided herein or as shown on the Map or as subsequently may be defined and determined by the Association. No reference to the Limited Common Elements, whether the same are exclusive or non-exclusive, need be made in any deed, instrument or conveyance and the appurtenant rights to such Limited Common Elements shall be included by reference in any description of a Unit.

2.7 Condominium Area. Condominium Area shall mean the property described in Section 1.1 of Article I of this Declaration.

2.8 Condominium Map. Condominium Map or Map shall mean the Condominium Map of Seneca Center Condominiums, recorded concurrently with the recording of this Declaration and any Condominium Maps recorded concurrently with or in connection with a Supplemental Declaration executed by the Declarant as provided herein.

2.9 Condominium Project. Condominium Project or Project shall mean the Condominium Area, the development on the Condominium Area including all Condominium Units, all common elements, the plan of development established by this Declaration and all things done pursuant to this plan.

2.10 Condominium Unit. Condominium Unit, Unit, or Condominium shall mean an individual, separately designated air space unit and the undivided interest in and to the Common Elements appurtenant to such air space unit and all easements appurtenant thereto, **within the Condominium Area.**

2.11 Declarant. Declarant shall mean **Schrader Properties, LLC; Sierra Resources Corporation and BLJ, Inc., their successors and assigns.**

2.12 Declaration. Declaration shall mean this Declaration of Conditions and Restrictions for Seneca Center Condominiums and any Supplemental Declaration duly made and recorded by the Declarant as authorized herein

2.13 Executive Board. The Executive Board or Board shall mean and refer to the Board of Directors of the Association as constituted from time to time.

2.14 Member. Member shall mean every person or entity that holds membership in the Association by virtue of Ownership of a Condominium Unit.

2.15 Mortgage. Mortgage shall mean any mortgage, deed of trust or other security interest on a Condominium Unit. The term "deed of trust" shall be synonymous with the term "Mortgage." First Mortgage shall be a security interest as defined in C.R.S. § 38-33.3-316 (2)(a)(II)

2.16 Mortgagee. Mortgagee shall mean a person or other entity, or any successor to the interest of such person or entity, to whom a Mortgage is made and shall include the beneficiary of a deed of trust. First Mortgagee shall mean the holder of a First Mortgage.

2.17 Owner. Owner shall mean the record owner, whether one or more persons or entities, of a fee simple interest in a Condominium Unit, including the Declarant with respect to each Condominium Unit owned by it. For the purpose of this Declaration, any person holding a purchaser's interest under a contract of sale and purchase of a Condominium Unit, under which such person has the right to possession of the Condominium Unit and has assumed the obligation to pay assessments and otherwise meet all responsibilities of an Owner under this Declaration shall be considered to be the Owner of the Condominium Unit, and, in such case, the seller under such contract of sale shall not be considered to be the Owner.

2.18 Record, File, Recordation, or Recorded. Record, file, recordation, or recorded shall mean, with respect to any documents, the recordation or filing of such document in the office of the County Clerk and Recorder of Larimer County.

2.19 Rules and Regulations. Rules and Regulations shall mean the rules and regulations adopted by the Board pursuant to this Declaration as the same may be amended from time to time.

Other terms may be defined in specific provisions contained in this Declaration and shall have the meaning assigned by such definition.

### Article III. The Condominium.

3.1 Submission to the Colorado Common Interest Ownership Act. The Condominium Area, including all easements, rights and appurtenances thereto and the buildings and improvements erected thereon, is hereby submitted to the provisions of the Colorado Common Interest Ownership Act and shall hereafter be held, transferred, sold, conveyed and occupied as a Condominium subject to the provisions of this Declaration and the Act.

3.2 Name of Condominium. The name of the Common Interest Community is Seneca Center Condominiums. Such Common Interest Community is a Condominium.

3.3 Description of Unit. Every deed, lease, mortgage, will or other instrument shall legally describe a Unit by its identifying Unit number followed by the words "The Seneca Center Condominiums, according to the Map thereof filed for record in accordance with and subject to the Declaration of Covenants, Conditions and Restrictions of the Seneca Center Condominiums, recorded at Reception

Number \_\_\_\_\_ of the records of the Clerk and Recorder of the County of Larimer, Colorado.” Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit, but also, the General Common Elements and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include: a non-exclusive easement for ingress and egress throughout and for use of the General Common Elements which are not Limited Common Elements; the right to the appropriate exclusive use of the Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration, without specific reference(s) thereto.

#### Article IV. The Association.

4.1 Authority. The business affairs of the Condominium shall be managed by the Association.” The Association shall be governed by its Bylaws, as amended from time to time.

4.2 Powers. The Association shall have all of the powers, authority and duties permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act as may be necessary and proper to manage the business and affairs of the Condominium. The Association may assign its future income, including its rights to receive Common Expense Assessments, only by the affirmative vote of the Unit Owners to whom at least two-thirds of the votes in the Association are allocated, at the annual meeting or at a special meeting duly called for that purpose. **The Association may adopt such reasonable rules and regulations allowed by the Act as may be necessary to govern the activities of the Association and the use and operation of the Condominium Project. If any Owner objects to a specific rule or regulation, the Owner may require an Owner’s meeting, which meeting shall be held within thirty (30) days. If a majority of Owners do not approve a rule or regulation, the rule shall be deemed unenforceable. Once approved by the Members, no Member shall have further rights to submit a rule to a vote of the Members, as allowed herein.**

4.3 Insurance. The Association shall obtain and maintain in place the insurance required in the Act (§313) and such other insurance as the Board deems necessary or desirable for the Condominium Project and its Owners.

4.4 Easements. The Association shall have the power to grant easements across Common Areas to the extent that it determines the same necessary or in the best interest of the Owners.

4.5 Declarant Control. Subject to the restrictions of the Act, the Declarant shall have the power to appoint and remove officers and members of the Executive Board of the Association for a maximum period of twelve years, but not to exceed the period allowed by the Act or either sixty days after conveyance of seventy-five percent of the units that may be created to Unit Owners other than a Declarant, two years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two years after any right to add new Units was last exercised (§ 303).

#### Article V. Units

5.1 Number of Units. Initially the number of Units in the Condominium is six, all located in Building 1. The maximum number of Units which can be created on Lot 1 and Lot 2 of the Condominium Area is twenty of which seven are Commercial Office/Retail Units and seven are Residential Units. All of such additional units will be located on Lot 2.

5.2 Identification of Units. The identification number of each building and Condominium Unit initially existing in the Condominium Project is shown on the Map.

5.3 Boundaries of Units. The boundaries of each individual air space Unit now existing on Lot

l are located as shown on the Map. More specifically, the boundaries shall be the center of the demising walls between such Units, the interior surface of exterior building walls that serve as the boundary of such Unit, the top surface of the lowest sub-floor, (or if none of the foundation slab) of the Unit and the interior surface of the ceiling of the Unit. Doors and windows in exterior walls shall be considered to be part of the air space Unit.

#### **Article VI. Common Elements and Limited Common Elements.**

6.1 Undivided Interests. Ownership of the Common Elements shall remain undivided, and no Unit Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of all Owners in the Condominium Project with respect to the ownership, operation, and management of the Condominium.

6.2 Access to Common Elements and Limited Common Elements. Unit Owners and the Association or their agents shall have access to the Common Elements, including, without limitation, facilities common to more than one Unit for installation, maintenance, repair, replacement, and service of the Common Elements, including utility lines, pipes, and similar facilities.

6.3 Appurtenant Limited Common Elements. The parking facilities and pedestrian and vehicle access-ways on Lots 1 and 2 are Common Elements for the benefit of the Commercial Office Condominium Units now existing on Lot 1 and the Commercial Office Condominium Units to be built on Lot 2. If Residential Condominium Units are constructed on Lot 2, additional parking facilities may be constructed on Lot 2, as Limited Common Elements, for the benefit of those Residential Units and those Residential Units may not use or be responsible for the parking facilities and pedestrian and vehicular access-ways now constructed on Lots 1 and 2. The parking facilities and vehicular and pedestrian access-ways shown on the Condominium Map on Lots 1 and 2 are Limited Common Elements for the benefit of the Commercial Office/Retail Condominium Units now constructed on Lot 1 and any Commercial Office/Retail Condominium Units to be constructed on Lot 2.

#### **Article VII. Use and Other Restrictions and Obligations.**

7.1 Use. The Condominium Units as constructed on Lot 1 may be occupied and used as Commercial Office or Retail Condominiums provided such use is conducted in compliance with all zoning and applicable building codes. If Commercial Office/Retail Condominium Units are constructed on Lot 2 and Lot 2 is subjected by Declarant to this Declaration, such Units located on Lot 2 may likewise be used for office or retail use, as well as residential uses. No Unit located on Lot 1 shall be occupied for residential purposes. Any Owner may rent a Condominium Units for any permissible use, provided the lease is subject to all of the provisions the Declaration, the Articles, the Bylaws, and the Rules and Regulations. The Rules and Regulations may require that a copy of any such lease be filed with the Association.

7.2 Prohibitions. The following activities and uses shall be prohibited within the Condominium Project:

7.2.1 Nothing shall be done or kept in any Condominium or within the Common Elements or any part thereof which could be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body having jurisdiction.

7.2.2 No noxious, destructive, or offensive activity shall be carried on in any Condominium or in the Common Elements or any part thereof, nor shall anything be done within the Condominium Project which may be or become an annoyance or nuisance to any other Owner or to any person at any time lawfully using the Project.

7.2.3. No annoying lights, sounds, or odors shall be permitted to emanate from any Condominium to any other portion of the Condominium Project.



7.2.4. No ashes, trash, rubbish, or other refuse shall be stored or deposited anywhere within the Common Elements, except in areas designated by the Board for such purpose and in the manner required by the Board. The Board may designate specific types of trash disposal containers to be used, in which case no other type container may be used.

7.2.5. Nothing shall be done in, on, or to any portion of the Project which will impair the structural integrity of the improvements located thereon.

7.2.6. No use of, treatment of, storage of, refining of, processing of, or disposing of hazardous wastes, hazardous substances, or toxic substances as the terms are defined under CERCLA, 42 U.S.C. 9601 *et seq.*, RCRA, 42 U.S.C. 6901 *et seq.*, shall be allowed except in accordance with applicable laws.

7.3 Prohibitions Without Consent of Association. Each of the activities listed in this section shall be prohibited unless the Board grants prior specific written permission with respect thereto. Such written permission shall specify the activity permitted and any conditions applicable thereto. Any permission so granted shall be revocable by the Board at any time after delivering notice of such relocation to the Owner. The activities thus conditionally prohibited are as follows.

7.3.1 Nothing shall be done or kept in any Condominium or on any Common Elements or any part thereof which will result in the cancellation of insurance on the Project or any part thereof, or increase the rate of insurance on the Project or any part thereof, over that which the Association or the Owners, but for such activity, will pay.

7.3.2. No structural alterations shall be made to any part of the Condominium Project by an Owner.

7.3.3 There shall be no obstruction of any of the Common Elements.

7.3.4 Except in designated storage areas (if any), nothing shall be kept or stored on any part of the Common Elements, including but not limited to boats, vehicles, storage facilities, trailers, bicycles or other personal property.

7.3.5 Nothing shall be altered on, constructed in, or removed from the Common Element without approval of the Association.

7.3.6 Signs shall be no larger than permitted by the Rules and Regulations adopted by the Association and shall contain nothing other than the name of the occupant and the business or profession conducted by the occupant of the Condominium Unit. The Association may require that signs be of specified materials, and meet other specifications set forth in the Rules and Regulations or any sign code. The Rules and Regulations may also restrict areas where signs may be erected or placed and may prohibit specified types of sign lighting.

7.4 Parking Areas. Parking areas within the Project shall not be used for other than parking motor vehicles except as expressly permitted by the Association. No vehicle of any kind shall be parked on any portion of the Condominium Project except in a designated parking area. The Association shall have the power in its Rules and Regulations to impose further reasonable limitations and controls (including designation of employee parking areas) on parking areas. The Association shall have the right to remove any vehicle, boat, trailer or bicycle parked in violation of these restrictions or any Rule or Regulation adopted by the Association and to charge the cost of such removal against the owner of the vehicle. If any such owner shall be a member of the Association, the cost may be added to any assessment on the Unit owned by the Owner **allowing the improper use of such parking area.**

7.5 Trash and Trash Removal. Unless the Association provides trash bins and trash removal services, Owners or their tenants shall provide for such services. If the Association provides trash service, the cost of such service shall be assessed against owners and may be specially assessed to any Owner

whose use is disproportionate to other Owners' uses. The Association may control the location and maintenance of trash bins and trash services provided to Owners and tenants in the Condominium Project through the Rules and Regulations. Individual Owners and tenants may agree to share such trash bins and removal service. Trash bins shall be regularly emptied. Areas around such trash bins shall be monitored so that no unsightly condition is created. Trash bins will be located so that they do not interfere with the parking needs generated by the Owners and tenants occupying the condominiums.

7.6 Conformance with Rules and Regulations. Every Owner, tenant, employee, and invitee shall strictly adhere to and comply with all Rules and Regulations adopted by the Association.

7.7 Fines. The Association in its Rules and Regulations shall have the power to establish a uniform schedule of fines and to levy such fines for violations of the Declaration and/or the Rules and Regulations. Any such fine so levied may be added to the assessments due from the Unit Owner.

7.8 Owner Improvements. No Owner shall undertake any interior improvements within a Condominium Unit without first obtaining all required permits. All improvements shall be in conformance with applicable building codes. Electrical and mechanical plans shall be first submitted to the Association for its review and approval; approval shall not be unreasonably withheld. The reasonable cost of any consultant retained by the Association for the purpose of reviewing and evaluating the proposed plans shall be reimbursed by the Owner to the Association. Any upgrade in service piping, wiring, or equipment shall be performed by licensed contractors approved by the Association and paid for by the Owner. All electrical and mechanical work shall be performed by licensed and insured contractors. The Owner shall indemnify the Association in a form acceptable to it against any injury, damage or loss occasioned by Owner's undertaking any interior improvement or construction. The Owner shall also maintain a policy of general liability insurance naming the Association as an additional insured during any period of construction.

#### Article VIII. Assessments.

8.1 Assessments. Each Owner of a Condominium Unit by acceptance of a deed to such Unit agrees to pay the Association Common Expense assessments levied by the Association in order to enable it to pay the Common Expenses incurred by the Association in performing its duties under the Declaration and the Act. Such assessments, together with interest and the cost of collection in the event of delinquency in payment as provided hereunder, shall be the personal obligation of the persons who were the Owners at the time the assessment was made. Payments of assessments shall be made in monthly or other periodic installments as determined from time to time by the Executive Board. The Association may, from Common Expense assessments levied and collected, establish cash reserves and depreciation funds in anticipation of future expenses.

8.2 Special Assessments. The Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, if any, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners and no payment shall be due less than ten (10) days after such notice shall have been given.

8.3 Default Assessments. All monetary fines assessed against an Owner pursuant to this Declaration or the Rules or Regulations, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the association documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

8.4 Basis.

8.4.1 Determination and Levy. The Board shall determine the amount of assessments to be made on Owners of Units in the Condominium Project and shall levy such assessments no less often than annually in accordance with the provisions of this Declaration and the Act (§ 315). All assessments so levied shall be a lien on the Unit of the Owner so assessed (§ 316) and the personal liability of such Owner.

8.4.2 Basis of Determination. Assessments shall be based upon the cash requirements deemed to be such aggregate sum as the Board shall determine from time to time is needed to provide for the payment of Common Expenses for the current year, as reflected in the budget duly adopted by the Board in accordance with the requirements of the Act (§303). Such regular assessments shall include the amount required to provide an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. The Board may assess any common expense or a portion thereof benefitting fewer than all of the Units conclusively against the Owners of such benefitted Units. The cost of maintaining the parking lot and pedestrian and vehicular access-ways installed on Lot 1 and Lot 2, including all landscaping thereon, and all repairs and replacements thereto shall be allocated among the completed Commercial Condominium Units pro rata based on the relative square feet of floor area in such completed Unit.

8.4.3 Individual Assessments. The Association shall have the power to add to the regular assessment against any Owner any amount expended by the Association for the benefit of an individual Condominium Unit or the Owner or Owners thereof as provided in this Declaration. Expenses incurred by the Association for repairs and replacements to the Common Elements caused by the negligent or willful acts of any Owner, his employees, licensees, lessees or invitees and any similar expenditure provided for by this Declaration or the Rules and Regulations adopted by the Association shall be assessed against such Owner. Similarly, fines, interest and similar charges levied pursuant to this Declaration or the Rules and Regulations of the Association shall be added to the assessment against the Owner subject to the same. The Board may, if it determines such actions to be fair and equitable, assess costs of repairing, maintaining, and operating Limited Common Elements appurtenant to a specific Unit or Units against the Owners of such Units. Similarly, the Board may assess any Common Expense or portion thereof benefitting fewer than all of the Units, or disproportionately benefitting a particular Unit, exclusively or representatively against the Owners of such benefitted Units. **If Lot 2 is subsequently subjected to this Declaration and any residential component of Building 2 has separate parking facilities, the Board may assess the cost to maintain the Residential parking facilities against the Residential Units and the cost to maintain the balance of the parking facilities against the Owners of the Commercial Office/Retail Units.** Assessments for insurance premiums shall be allocated in proportion to risk as provided in the Act (§ 315). Assessments for utility service provided as a common expense shall be allocated as provided in Article IX hereunder.

8.5 Nonexception. No Owner of a Condominium shall be exempt or relieved from payment of any assessment or charge by waiver or suspension of the use of any Common Element or by the abandonment or leaving of any Condominium Unit.

8.6 Delinquency and Acceleration. Any installment of an assessment provided for in this Declaration shall become delinquent if not paid on the due date as established by the Board. With respect to each installment of an assessment not paid within ten (10) days after its due date, the Board may, at its

election, require the delinquent Owner to pay a late charge not to exceed Five Dollars (\$5.00) or 5 percent (5%) of the amount of the delinquent installment, whichever is greater, together with interest accruing thereon at such uniform rate as may be established by the Association in its Rules and Regulations (or 18% per year if no rate has been otherwise established), not exceeding any maximum amount provided by the Act (Section 315 (2)), calculated from the due date to and including the date full payment is received by the Association. If any installment of an annual assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of delinquency to the Owner and to each First Mortgagee of a Condominium Unit that has requested a copy of such notice which notice shall specify: (i) the fact that the installment is delinquent; (ii) the action required to cure the default; (iii) a date not less than thirty (30) days from the date the notice is mailed to the Owner by which such default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the annual assessment for the then current fiscal year and foreclosure and sale of the Condominium Unit. If the delinquent installment of the annual assessment and charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the annual assessment for the then current fiscal year attributable to that Owner and the Owner's Condominium immediately due and payable, without further demand, and may enforce the collection of the full annual assessment and all charges thereon in any manner authorized by law and this Declaration. In addition to the amount of the assessment, interest and charges thereon, the Association may collect from any delinquent Owner and include as part of the assessment all reasonable attorneys fees and other expenses incurred by the Association in collecting delinquent assessments.

8.7 Creation and Release of Lien. All sums assessed in accordance with the provisions of this Declaration including additional sums due on account of delinquency in payment shall create a lien on the Unit of the Owner against whom the assessment was levied, and such assessments shall be enforceable through the statutory lien created pursuant to the Act in the manner provided therein (§ 316).

8.8 Enforcement of Liens. It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by one or more of the alternate means of relief afforded in the Act or herein. In the event of a foreclosure of any lien created hereunder, the Owner shall be required to pay reasonable rental to the Association for occupying the Condominium Unit during the period of foreclosure. If after filing a foreclosure the Condominium Unit is left vacant, the Association may take possession of said Condominium and rent it upon such terms and conditions and for such rental as the Board determines proper in its sole discretion. Any rental received shall be applied first to payment of current assessments, then to costs of collection and foreclosure, then to interest accrued on delinquent assessments, and finally to payment of delinquent assessments. The Association may also apply for and obtain the appointment of a receiver for any such Condominium Unit without notice to the Owner and regardless of whether the Unit is vacant. The Association shall have the power to bid at a foreclosure sale and if title is obtained by the Association through a foreclosure sale it may hold, lease, mortgage, and encumber or convey the property so obtained. Suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same. Neither this provision nor any institution of suit to recover a money judgment without foreclosing the lien shall constitute an affirmation of the adequacy of money damages.

8.9 Sale - Effect. Except as otherwise expressly provided in this Declaration or the Act, sale or transfer of any interest in a Condominium Unit by an Owner shall not affect or release any lien granted the Association hereunder.

8.10 Payment on Encumbrances. In the event any Owner is in default on any obligation secured by an encumbrance on such Owner's Condominium Unit, the Board may, at its option, pay the amount due on such obligation and in such event the Association shall have a lien against such property in the same manner as provided for herein for unpaid assessments or fees.

## Article IX. Utilities.

9.1 Assessments. Each separately owned Unit shall have its own electric meter and gas meter, and each Unit Owner shall be responsible for payment of the cost of electric and gas service to that Owner's Unit. Building 1 and any building subsequently constructed on Lot 2, if Lot 2 is subjected to this Declaration shall each have separate water meters that serve the buildings. The Board shall allocate the charges for water service to each building among the Units receiving such water service as the Board determines fair and equitable based on the cost of service to the various Units. Sanitary sewer service is billed monthly based on the volume of water supplied to the building in which a Unit is located. That billing is initially at the rate of \$22.35 per user for up to 4,000 gallons of water delivered during the month. If water delivery exceeds that amount, a surcharge will be made to the Association. The Association shall assess any surcharge made for a building among the Units in the building that receive water service *pro rata* based on the floor area of each Unit in the building. If the Board determines that such an allocation is not equitable, it may, by its Rules and Regulations, establish a different method of allocating the surcharge among the Units in the building.

9.2 Minimum Temperature. Due to shared water lines, each Owner shall maintain a minimum temperature of 40 degrees Fahrenheit at all times in its Unit.

9.3 Sewer District Requirements. To comply with the rules of the District, each Owner is required: (a) to give notice of any change in occupancy or vacancy of its Condominium Unit to the District; (b) to obtain a Permit to Discharge from the District and pay associated fees; (c) to allow unnoted access to its Condominium Unit to District pretreatment personnel for enforcement of District regulations.

## Article X. Maintenance.

10.1 Unit Maintenance. Each Owner shall be obligated to keep in good repair and condition the nonsupporting walls, the material (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, wall paint and floor tile and flooring, but not including the sub-flooring) which make up the finished surfaces of the perimeter walls, ceilings and floors within the Owner's Unit, including Unit doors and windows. Windows and exterior doors shall be kept clean. All lines, pipes, wires, conduits or systems (hereafter referred to as utility lines) running through a Condominium which serve one or more other Condominiums are Common Elements. Such utility lines shall not be disturbed or relocated by an Owner without the written consent and approval of the Association. An Owner's right to repair, alter and remodel the interior of his Condominium shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Building containing the Unit or impair any easements or encroach upon others' rights created hereunder.

10.2 Limited Common Elements. Each Owner shall maintain in a neat and attractive condition the Limited Common Elements appurtenant exclusively to the Owner's Condominium; provided, that such responsibility shall relate only to maintaining the interior or enclosed portions thereof, and such Owner shall not be responsible (except under such circumstances as are elsewhere provided for herein) to paint, repair or otherwise similarly maintain structures, or the parking lot, which responsibility shall be the Association's. Air conditioning units, furnaces or other heaters, and utility meters and any similar facilities located on the roof or otherwise outside of the airspace Unit, shall be Limited Common Element, appurtenant to the Unit or Units they serve.

10.3 Maintenance of Common Elements. The maintenance of the General Common Elements shall be the responsibility and the expense of the Association, and the costs therefor shall be a Common Expense of all Condominium Unit Owners within the Condominium Project. Except as otherwise provided in this Declaration, the maintenance of Limited Common Elements shall also be the responsibility and expense of the Association, but the costs therefor shall be a Common Expense only of the Condominium Unit Owners whose Units are served by such Limited Common Element, with such expense to be shared by such Owners equally unless the Association determines that another sharing allocation is more equitable.

## Article XI. Reserved Development and Special Declarant Rights

11.1 Declarant reserves the development rights and special declarant rights for itself and any successor Declarant, from time to time, as follows:

(a) Lot 2. Declarant may subject all or any portion of Lot 2 to this Declaration. Subject to Article 5.1, Declarant reserves the right to create additional units on Lot 2, not to exceed seven Commercial Office/Retail Units and seven Residential units, and to further create additional Common Elements. Allocated interests, as set forth on Exhibit A attached, shall be recalculated as provided for in Article 11.2 and assessments shall be charged, based upon the recalculated percentages in the provisions of this Declaration. Each new Unit shall be entitled to one membership vote, as provided for in Article 11.1, and all other rights of membership afforded by the Declaration.

(b) Declarant may subdivide any Unit owned by Declarant into two or more Units or may include any Unit as a Common Element if such area designated as a Common Element provides services for other Units. Specifically, Declarant may divide areas within Units 101 and 102 of Building 1 to include a "fire riser room" available to all Units and to designate such area as a Common Element. If any Unit is divided, as allowed hereunder, a new Map and an amendment to the Declaration reallocating all Allocated Interests, as set forth on Exhibit A and in Article 12.2 of the Declaration, shall be filed with the Clerk and Recorder of Larimer County, Colorado.

(c) Declarant may, from time to time, maintain and relocate sales offices, management offices, signs and advertising in the Project of any size, on one or more Units and within the Common Elements, so long as Declarant or any Successor Declarant continues to be an Owner of a Unit for the period of Declarant control has not terminated.

11.2 Termination of Rights. The rights reserved to the Declarant for itself, its successors and assigns, shall expire, unless sooner terminated, as required by the Act at the time of termination of Declarant control, after twelve years but not to exceed the time allowed, as set forth in Article 4.5.

## Article XII. Allocated Interests and Easements

12.1 Voting. Each Condominium shall have one vote in the Association. If there is more than one Owner of a Unit, any of such Owners may cast the vote for such Unit unless another objects, in which case the chairperson of the meeting may determine which Owner shall have such vote, or the chair may deny the right to vote for the Unit.

12.2 Determination of Allocated Interests. The undivided percentage interest in the General Common Elements appurtenant to each Condominium Unit is based on the relative floor area in each Condominium Unit set forth on Exhibit A. Except as otherwise provided in this Declaration, Common Expenses shall be shared and assessments therefor shall be levied against individual Units in the same percentages. If Lot 2 is subjected to this Declaration by Declarant, Allocated Interests will be recalculated based on the actual square footage of each Unit in Building 2 and an amended Map and Exhibit A setting forth the re-allocated interests shall be recorded with the Clerk and Recorder of Larimer County, Colorado.

12.3 Easements and Licenses in this Declaration. All easements and licenses to which the Condominium is presently subject are recited in Exhibit B and shown on the Condominium Map.

## Article XII. General Provisions.

12.1 Enforcement. Enforcement of any provision of this Declaration, the Act, the By-Laws, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination

thereof. Such proceedings may be instituted by an Owner, the Association or the Declarant. In the event it becomes necessary to commence such proceedings, the prevailing party shall be entitled to recover the costs and reasonable attorney's fees incurred in connection with such proceedings. In addition, the Association may levy such fines and penalties as may be adopted pursuant to the Declaration for failure to convey with this Declaration. The failure to enforce any provision of this Declaration, the Act, the By-Laws and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision. The Association shall not be liable to reimburse any Unit Owner for attorney's fees or costs incurred in any suit brought by a Unit Owner to enforce or attempt to enforce this Declaration.

12.2 Indemnification. To the full extent permitted by law, each officer and member of the Executive Board shall be and they are hereby indemnified by the Association against all expenses and liabilities, including attorneys fees, reasonably incurred or imposed upon them in any proceeding to which they may be a party, or in which they may be involved, by reason of their being or having been an officer or member of the Executive Board, or any settlement thereof, whether or not they are an officer or member of the Executive Board at the time such expenses are incurred, except in cases where such officer or member of the Executive Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided, that in the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interest of the Association.

12.3 Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration.

12.4 Conflict. If there is any conflict between the Declaration and the mandatory provisions of the Act, the mandatory provisions of the Act shall control. In the event of a conflict between this Declaration and the Bylaws, the Declaration shall control.

12.5 Duration. The covenants, conditions and restrictions of this Declaration shall run with the Property, shall be binding on all Unit Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration or the Act.

12.6 Amendment. Except as otherwise provided in this Declaration or the Act, this Declaration may be amended at any time by a written and recorded instrument containing the consents of the then record Owners of more than 50 percent (50%) of the Units within this Condominium Community, or such lesser percentage as may be provided in the Act.

12.7 Section References. Section references in parentheses are for convenience in locating applicable portions of the Act. Such section references are for that purpose only and are not to have any substantive meaning.

12.8 Notice. Notice of matters affecting the Common Interest Community may be given to Unit Owners by the Association of the Unit Owners or any other person by hand delivery or by United States First Class, Registered, or Certified Mail as selected by the party giving such notice. Notice sent by mail to the Association shall be sent as designated by the Association from time to time in its rules and regulations or by notice duly delivered to all Owners. Mailed notice shall be deemed received on the earlier of the date actually received by the addressee or three (3) days after being properly



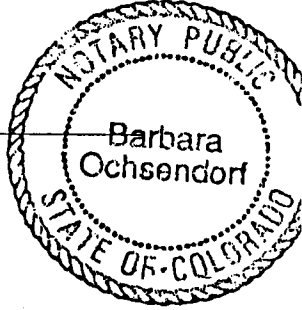


STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 2002, by David J. Pietenpol, as Manager of Sierra Resources Corporation.

Witness my hand and official seal.  
My commission expires: 5-29-2005

Barbara Ochsendorf  
Notary Public

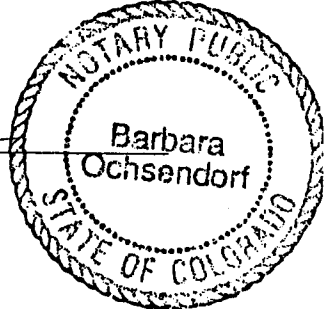


STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 2002, by Larry Hawe, as President of BLJ, Inc.

Witness my hand and official seal.  
My Commission expires 5-29-2005

Barbara Ochsendorf  
Notary Public

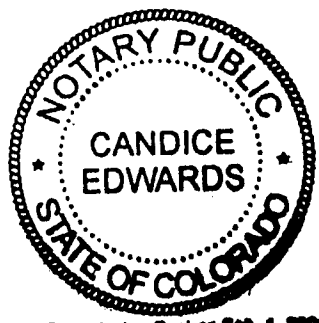


STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 2002 by Richard O. Pearson as Vice President of FIRST NATIONAL BANK, NA.

Witness my hand and official seal.  
My commission expires: 2-1-06

Candice Edwards  
Notary Public



My Commission Expires Feb. 1, 2006

## EXHIBIT A

### ALLOCATED INTERESTS

Exhibit "A" to Declaration of Covenants, Conditions and Restrictions  
for Seneca Center Condominium

Building Number	Unit	Floor Area Sq. footage	Initial % of Allocated Interest	Compeplated Final Allocated Interest %	
<b>Lot 1</b>					
	1	101	2,616	22.13%	8.22%
	1	102	1,696	14.81%	5.50%
	1	103	1,751	14.81%	5.50%
	1	104	1,891	16.76%	6.23%
	1	105	1,542	13.04%	4.85%
	1	106	2,181	18.45%	6.85%
Subtotal			11,822	100.00%	
<b>Lot 2 Commerical Bldg 2</b>					
		Contemplated Sq. Ft.			
	2A	1,142			3.59%
	2B	1,143			3.59%
	2C	1,143			3.59%
	2D	1,143			3.59%
	2E	1,143			3.59%
	2F	1,143			3.59%
	2G	1,143			3.59%
<b>Residential</b>					
	2H	1,714			5.39%
	2I	1,714			5.39%
	2J	1,714			5.39%
	2K	1,714			5.39%
	2L	1,714			5.39%
	2M	1,715			5.39%
	2N	1,715			5.39%
Subtotal			20,000		
Total			31,822		100.00%

## EXHIBIT B

### EASEMENTS AND LICENSES

1. Utility, drainage, and ditch easement along northerly boundary of Property.
2. Easements for existing streets dedicated in the subdivision plat of Fort Collins Industrial Park 1<sup>st</sup> Filing providing access to the Property.
3. Easements or claims of easements not shown by public records.
4. Right-of-Way easement granted to The Mountain States Telephone and Telegraph Company by instrument recorded May 24, 1977, in Book 1771, Page 358.
5. Terms, conditions, provisions, agreements and obligations contained in the Memorandum Agreement recorded August 27, 1998, at Reception No. 98073537.
6. Items set forth on the Plat of Overlook Fifth Filing, P.U.D.
7. Terms, conditions, provisions, agreements and obligations contained in the Deed of Dedication for Easement recorded August 27, 2001, at Reception No. 2001075021.
8. Easement and Access Agreement entered into among owners of Lots 1, 2 and 3, Overlook Fifth Filing, P.U.D.
9. Items shown on the Map.

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