

CONDOMINIUM DECLARATION FOR  
 THE ASPENS AT PANADERO CONDOMINIUMS

THIS CONDOMINIUM DECLARATION (the "Declaration") dated as of July 31<sup>st</sup>, 1986, shall be effective upon recordation and is made by FIRSTSOUTH, F.A., a federally chartered savings and loan association ("Declarant"). Declarant is the owner of certain real property in Huerfano County, Colorado, more particularly described on Exhibit A attached hereto (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE I

RECITALS

SECTION 1.1. Purpose. The purpose of this Declaration is to submit the Property to the condominium form of ownership and use pursuant to the Condominium Ownership Act, being Article 3, Title 38, Colorado Revised Statutes 1973, as amended and supplemented (the "Condominium Project").

SECTION 1.2. Intention of Declarant. Six condominium Units within three buildings are located on the Property. Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, and other charges set forth herein for the purpose of protecting the value and desirability of the Condominium Project, and for the purpose of furthering a plan for the improvement, sales, and condominium ownership of the Condominium Project, and to the end that a harmonious and attractive development of the Condominium Project may be accomplished and the health, comfort, safety, convenience, and general welfare of the Declarant and its successors and assigns of interests in the Condominium Project, or any portion thereof, may be promoted and safeguarded.

SECTION 1.3. Proposed Expansion and Permitted Withdrawal. In addition to the condominium Units described in Section 1.2 hereof, Declarant proposes to construct up to 16 additional condominium Units on all or portions of the Property and up to 32 additional Units on all or portions of the property described on Exhibit B, which Exhibit is attached hereto and by this reference incorporated herein. The approximate locations of the buildings containing such proposed Units are shown on the Condominium Map recorded contemporaneously with this Declaration. The Declarant hereby reserves the right, but is not obligated, to expand the Condominium Project to include any such additional Units, if and when constructed, so that such additional Units and the Condominium Project shall be treated as integral parts of a

single condominium ownership project all pursuant to the provisions of Article XIX of this Declaration. In addition, Declarant reserves the right to withdraw from the land described in Exhibit A to this Declaration the land shown as Areas "A" and "B" on the Condominium Map recorded contemporaneously with this Declaration. Such right of withdrawal and its effect on the condominium regime established hereby are described in Article XIX.

SECTION 1.4. Termination of Prior Declarations. This Declaration supersedes those two Condominium Declarations recorded August 13, 1982, in Book 364 at Page 424, and October 2, 1984, in Book 371 at Page 932, in the office of the Clerk and Recorder of Huerfano County, Colorado. This Declaration supersedes those two Condominium Plats recorded October 3, 1984, as Map No. 249, Pocket 5, Folder 3, and August 13, 1982, as Map No. 197, Pocket 4, Folder 1, in the office of the Clerk and Recorder of Huerfano County, Colorado.

NOW, THEREFORE, in consideration of the premises, the provisions hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities now or hereafter constructed on the Property, thereon, to condominium ownership under the Condominium Ownership Act of the State of Colorado, as it may be amended from time to time, and hereby imposes upon all of said Property the following covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions, and the Declarant hereby declares that all of said Property and any property or properties which become part of the Condominium Project through expansion shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the following:

## ARTICLE II

### DEFINITIONS

SECTION 2.1. Definitions. The following words when used in this Declaration shall have the following meaning unless the context shall expressly provide otherwise:

2.1.1. "Association" means the Aspens at Panadero Condominium Association, Inc., a nonprofit Colorado corporation, its successors and assigns, the Articles of Incorporation and Bylaws of which shall govern the administration of this Property and the members of which shall be all Owners of the Condominium Units.

2.1.2. "Board of Managers" means the governing body of the Association as provided in this Declaration, the Articles of Incorporation, and Bylaws of the Association.

2.1.3. "Common Elements" means the totality of the Condominium Project excluding the Individual Air Space Units, as hereinafter defined, and including, without limiting the generality of the following:

(A) The Property, excluding improvements thereon unless specifically described in this subsection; and

(B) The condominium buildings (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, patios, decks, balconies, halls, corridors, stairs, stairways, entrances and exits, lobbies, fire escapes, and any mechanical installations of the Condominium Buildings consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating which exist for common uses, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith), except for the Individual Air Space Units, as hereinafter defined; and

(C) The yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, gardens, parking areas, and related facilities upon the Property; and

(D) Any pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the condominium buildings existing for common use of the Owners; and

(E) In general, all other parts of the Condominium Project existing for the common uses of the Owners.

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

2.1.4. "Common Expenses" means and includes (a) expenses of administration, operation, and management, repair, or replacement of the General Common Elements, as hereinafter defined, of the Condominium Project except as such repairs and replacements are owner responsibilities as delineated in Section 9.2 below; (b) expenses declared Common Expenses by the provisions of this Declaration or the Bylaws of the Association; (c) all sums lawfully assessed against the Common

Elements of the Project by the Board of Managers of the Association; (d) expenses agreed upon as Common Expenses by the members of the Association; and (e) expenses provided for in any Management Agreement.

2.1.5. "Condominium Building(s)" or "Building(s)" means any building (including all fixtures and improvements therein contained) located on the Property (or any additional real property submitted to this Declaration) and within which one or more Individual Air Space Units, as hereinafter defined, are located.

2.1.6. "Condominium, Map(s)" or "Map(s)" means and includes the engineering survey or surveys of the Property locating the Buildings, floor plans, and other drawings or diagrammatic plans on the Property, including, without limitation, charts or schedules depicting all or part of the improvements on the Property and such other information as may be included thereon in the discretion of the Declarant.

2.1.7. "Condominium Unit" or "Unit" means the fee simple interest in and to an Individual Air Space Unit, as hereinafter defined, together with all fixtures and improvements therein contained, and together with the undivided interest in the Common Elements appurtenant to the Individual Air Space Unit, as hereinafter defined, as specified in Exhibit C attached hereto and by this reference incorporated herein.

2.1.8. "Declarant" means FirstSouth, F.A., a federally chartered savings and loan association and its successors and assigns.

2.1.9. "Declaration" means this Condominium Declaration, together with any supplement or amendment to this Declaration recorded in the office of the Clerk and Recorder of Huerfano County, Colorado.

2.1.10. "Development Rights" means those rights of Declarant and its successors and assigns to construct additional Units on the Property, to withdraw land from the Property, and to expand this Declaration to include additional Property, all as contemplated by Section 1.3 and Article XIX.

2.1.11. "Eligible Mortgage Holder" means a First Mortgagee who has requested notice as provided in Section 22.10.

2.1.12. "First Mortgage" means the unpaid and outstanding mortgage or deed of trust encumbering a Condominium Unit having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

2.1.13. "First Mortgagee" means the Mortgagee under a First Mortgage.

2.1.14. "General Common Elements" means the Common Elements, except for Limited Common Elements.

2.1.15. "Individual Air Space Unit" means a single residential dwelling Unit consisting of enclosed rooms in a Condominium Building and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows of such dwelling Unit. For the purpose of defining an Individual Air Space Unit, the terms:

(A) "Unfinished wall" means the studs, supports, and other wooden, metal, or similar structural materials which constitute the interior face of a wall.

(B) "Unfinished ceiling" means the beams, joists, and wooden structures which constitute the ceiling of an Individual Air Space Unit.

(C) "Unfinished floor" means the beams, floor joists, and plywood deck or similar floor deck material which constitute the floor of an Individual Air Space Unit.

An Individual Air Space Unit shall include the drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, windows and window frames, and doors and door frames. An Individual Air Space Unit shall also include any fireplace or stove hearth, facing brick, tile or firebox. An Individual Air Space Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors. An Individual Air Space Unit shall include any heating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, hot and cold water, electrical, or other utility services to the Individual Air Space Unit and located within the unfinished walls, ceilings, and floors; provided, however, that an Individual Air Space Unit shall not include any of the structural components of a Condominium Building or utility or service lines serving more than one Individual Air Space Unit, located within the Unit. Each Individual Air Space Unit as thus defined in this Section shall be shown on the Condominium Map to be filed for record.

2.1.16. "Limited Common Elements" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Condominium Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck or

patio, if any, adjacent to an Individual Air Space Unit, storage spaces outside Individual Air Space Units, ornamental exposed beams of ceilings, any fireplace chimneys and flues in each Condominium Building, any individual air-conditioning units, heat pumps, and fixtures, and individual water and sewer service lines, hot water heaters, and plumbing servicing the Individual Air Space Unit. Any balcony or patio which is accessible from, associated with, and which adjoins a particular Individual Air Space Unit, shall be used in connection with such Individual Air Space Unit to the exclusion of the use thereof by the other Owners, except by invitation. No reference to any balcony or patio need be made in any instrument of conveyance, encumbrance, or other instrument.

2.1.17. "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Managers relative to the operation, maintenance, or management of the Condominium Project.

2.1.18. "Manager" means a person, firm, corporation, or other entity employed or engaged as an independent contractor to perform management services for the Condominium Project.

2.1.19. "Maximum Rate" shall mean two percentage points greater than that rate of interest charged by United Bank of Denver to its best commercial customers for short-term loans and identified as the "prime rate" by United Bank of Denver as of the date on which such Maximum Rate is imposed with respect to any amount due under this Declaration.

2.1.20. "Mortgage" means any mortgage, deed of trust, or other security instrument recorded in the records of the office of the Clerk and Recorder of Huerfano County, Colorado, encumbering a Condominium Unit.

2.1.21. "Mortgagee" means any person named as a mortgagee or beneficiary under any Mortgage under which the interest of any Owner is encumbered, or any successor to the interest of any such person under such Mortgage.

2.1.22. "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Condominium Unit; excluding, however, any record owner with an interest in such Unit merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest pursuant to foreclosure or any proceedings in lieu of foreclosure). An Owner shall cease to be an Owner from the date of conveyance or assignment of record of such Owner's fee simple title interest to a Condominium Unit; provided, however, that the foregoing shall not in any way extinguish or otherwise void any unsatisfied obligation of such

Owner which existed or arose before the time of such conveyance or assignment, specifically including, without limiting the generality of the foregoing, any unsatisfied obligation to pay Association assessments.

### ARTICLE III

#### DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

SECTION 3.1. Division Into Condominium Units. The Condominium Project is hereby divided into six Condominium Units, each consisting of a fee simple interest in the Common Elements in accordance with the respective undivided interest in the Common Elements appurtenant to each Unit as set forth in Exhibit C attached hereto. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units.

SECTION 3.2. Inseparability. No part of Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be partitioned or separated from any other part of a Condominium Unit during the period of condominium ownership prescribed in this Declaration. Each Condominium Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Condominium Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Condominium Unit or any part of a Condominium Unit shall be presumed to be a conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition, as the case may be, of the entire Condominium Unit, together with all appurtenant rights and interests created by law or by this Declaration.

SECTION 3.3. Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and except as provided in Article XIX, no Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Condominium Unit, each Owner of such Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section 3.3 may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action, and such amounts shall automatically become a default assessment determined and levied against such Owner's Unit and the Association may proceed in accordance with Section 8.11 below. The provisions of this Section are subordinate to the provisions of Article XIX, and the

Declarant reserves for itself and its successors and assigns the right of partition and the right of withdrawal described in Article XIX.

SECTION 3.4. Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon, and inure to the benefit of, the Declarant, the Association, and all Owners, and upon and to their respective heirs, executors, administrators, personal representatives, successors, and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either in whole or in part, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association, or other entity.

#### ARTICLE IV

##### CONDOMINIUM MAP

SECTION 4.1. Condominium Map. The Map shall be filed for record in the office of the County Clerk and Recorder of Huerfano County, Colorado. The Map may be filed in whole or in parts or sections, from time to time, as stages of construction of any additional Units and other improvements are substantially completed. Each section of the Map filed subsequent to the first or initially filed Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown on such Map. The Map or any part or section of such Map depicting Condominium Units shall not be filed for record until the Building in which the Condominium Units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically, by registered engineers. The Map shall be filed for record before the conveyance of any Condominium Unit to a purchaser. The Map shall depict and show at least the following: the legal description of the Property and a survey of the Property; the location of the Buildings on the land; the floor and elevation plans; the location of the Condominium Units within the Buildings, both horizontally and vertically; the thickness of the common walls between or separating the Condominium Units; the location of any structural components or supporting elements of the Buildings; the Condominium Unit designations; and the Building designations. The Map shall contain a certificate of a registered professional engineer or licensed architect or a licensed land surveyor certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the Property, the Building or Buildings, the Condominium Units, the dimensions of the Condominium Units, the elevations of the unfinished floors and ceilings as constructed, the Building name or designation,



and that such Map is prepared subsequent to the substantial completion of the improvements. Each supplement or amendment shall set forth a similar certificate when appropriate.

SECTION 4.2. Interpretation. In interpreting the Map, the existing physical boundaries of each separate Condominium Unit as constructed shall be conclusively presumed to be its boundaries.

SECTION 4.3. Amendment. Declarant reserves the right to amend the Map, from time to time, to conform it to the actual location of any of the constructed improvements and, on or before July 31, 1991, to establish, vacate, and relocate outside the Building or Buildings utility easements, access road easements, and parking areas.

## ARTICLE V

### OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

SECTION 5.1. Rights of Ingress and Egress. Every Owner and family members, guests, and licensees of each Owner shall have a right and easement of ingress and egress over, across, and upon the General Common Elements for the purpose of getting to and from the Condominium Unit and parking area of such Owner, and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Condominium Unit; provided, however, that such right and easement shall be subject to the following:

5.1.1. The covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the Condominium Map; and

5.1.2. The right of the Association to assign specific parking spaces, storage spaces, or areas for the exclusive use of the Owners of particular Condominium Units or of particular Condominium Buildings; provided, however, that the Owners of each Condominium Unit will have the right to use one parking space for the purpose of automobile parking, the location of which shall be designated by the Association from time to time; and

5.1.3. The right of the Association to adopt, from time to time, any and all rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Condominium Project; and

5.1.4. The right of the Association to adopt, from time to time, any and all rules and regulations concerning

the Common Elements and any facilities located thereon as the Association may determine is necessary or prudent.

SECTION 5.2. Limited Common Elements. Subject to the provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his Condominium Unit.

## ARTICLE VI

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

SECTION 6.1. Association Membership. Every Owner shall be a member of the Association and shall remain a member for the period of his ownership of a Condominium Unit; provided, however, that in no event shall the total Association votes which are cast with respect to such Condominium Unit exceed one vote per Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit, provided, however, that any Owner may appoint in a writing furnished to the Association an agent or delegate to exercise the rights of such Owner as a member of the Association, and in the event of such appointment, the Delegate shall have the power to cast votes on behalf of the Owner as a member of the Association.

6  
5 units = 5 votes  
Declarant  
unit = 6 votes  
6 units ÷ 4 = 4  
10  
8/20/91  
+

SECTION 6.2. Classes of Association Membership and Voting Rights. There shall be two classes of membership. Members shall be all Owners (including the Declarant). The Owners of each Condominium Unit, collectively, other than Declarant, shall have one vote. When more than one person holds an interest in a Condominium Unit, they may appoint one of their Co-Owners or a Delegate as proxy to cast the vote for that Condominium Unit. The vote for such Condominium Unit shall be cast as the Owners of such Unit agree, but the voting interest allocated to such Condominium Unit shall not be divided among Co-Owners. Declarant shall have six votes for each Condominium Unit owned by Declarant and one vote for each four proposed Units which may be constructed on the Property as described in Section 1.3 and Article XIX. On the date five years from the date this Declaration is recorded, all Owners, including Declarant, shall have one vote per Condominium Unit owned and one vote for each four proposed Units as described in the preceding sentence.

SECTION 6.3. Owner's and Association's Address for Notices. Unless an Owner shall have notified the Association by registered or certified mail of a different address, any notice or other written instrument required to be given, or otherwise given, by the Association under this Declaration to any Owner may be mailed to such Owner in a postage prepaid envelope and mailed by first-class, registered, or certified mail to the address of the Condominium Unit shown upon the Association's records as

being owned by such Owner. If more than one Owner owns a particular Condominium Unit, then any notice or other written instrument may be addressed to all of such Owners, and may be mailed in one envelope in accordance with the foregoing sentence. Any notice or other written instrument given by the Association in accordance with this provision will be deemed to have been given on the date that it is mailed. All notices and demands intended to be served upon the Board of Managers shall be sent by regular, registered, or certified United States mail, postage prepaid, to the following address:

FIRSTSOUTH F.A.  
512 Pine Street  
P. O. Box 5900  
Pine Bluff, Arkansas 71611

until such address is changed by notice of address change given to the Owners by the Board of Managers pursuant to this section.

## ARTICLE VII

### THE ASSOCIATION

SECTION 7.1. Association Management Duties and Duty to Establish Reserve Account. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall be responsible for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements (including facilities, furnishings, and equipment related to the Common Areas), and shall keep them in good, clean, attractive, and sanitary condition, order, and repair; provided, however, that each Owner shall be responsible for maintaining and keeping in repair the Limited Common Elements designated for use in connection with his Condominium Unit and for keeping them in a good, clean, sanitary, and attractive condition. The Association shall be responsible for the maintenance, repair, replacement, and improvement of those Common Elements constituting the exterior surfaces of the Condominium Buildings (including, without limitation, the painting of such surfaces as often as necessary, the replacement of trim and caulking, and the maintenance and repair of roofs). The Association shall maintain in a proper, first-class manner all grass, trees, shrubbery, flowers, and similar landscaping constituting part of the Common Elements and all roadways, walkways, driveways, and parking areas constituting part of the Common Elements, including, without limitation, providing snow removal services as necessary. The Association shall be responsible for maintenance and repair of the General Common Elements and the Limited Common Elements, except as provided herein. The Association shall establish and maintain, out of the monthly installments of the annual assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be replaced on

a periodic basis. The foregoing specification of the duties of the Association with respect to particular Common Elements shall not be construed to limit its duties with respect to other Common Elements, as set forth in the first sentence of this Section 7.1. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Association assessment, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

SECTION 7.2. Owner's Negligence. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion of the Common Elements, is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if not repaid to the Association within seven days after notice to the Owner of the total amount, or any portions of such amount from time to time, of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Section 7.2, and such expenses, costs, and fees shall automatically become a default assessment determined and levied against such Condominium Unit, and the Association may proceed in accordance with Section 8.11 below.

SECTION 7.3. Delegation of Management and Maintenance Duties. The Board of Managers may delegate all or any part of its powers and duties to a Manager or a managing agent, including the Declarant (provided any such management agreement entered with Declarant shall be terminable on 90 days' notice by either party); however, the Board of Managers, when so delegating, shall not be relieved of its responsibilities under this Declaration. In addition, the Association may employ independent contractors or such other employees or persons as it deems necessary to carry out the Association's functions set forth in this Declaration and may prescribe their duties.

SECTION 7.4. Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of such personal property by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such interests shall not be transferable except with the transfer of a Condominium Unit. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property without any reference to the property. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights

of other Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium Unit.

SECTION 7.5. Promulgation of Rules and Regulations. The Board of Managers may make and amend reasonable rules and regulations governing the use of the Condominium Units and the Common Elements, which rules and regulations shall be substantially consistent with the rights and duties established in this Declaration and in the Association's Articles of Incorporation and Bylaws. The Board of Managers shall provide 30 days' written notice before the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Board of Managers on the proposed adoption or amendment of any rules and regulations. The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

SECTION 7.6. Identity of Board of Managers. From time to time, but no less than annually, the Association shall mail to each Owner a notice containing the names and addresses of the members of the Board of Managers and the managing agent, if any.

SECTION 7.7. Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall receive upon the initial sale or leasing of each Condominium Unit an amount equal to two months' assessments. This payment to the Association for working capital funds shall only apply to the first sale or first leasing by Declarant of each Condominium Unit, and the payment shall be in addition to any monthly installments of the annual assessment which may be due at the time of such sale or leasing.

SECTION 7.8. Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the Articles of Incorporation or Bylaws of the Association, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it by this Declaration or reasonably necessary to effectuate any such right or privilege. Notwithstanding any other provision which may be contained in this Declaration to the contrary, the Association shall not be empowered to do the following, unless two-thirds of the First Mortgagees (based upon one vote for each Mortgage owned) or Owners (other than Declarant) of the individual Condominium Units have given their prior written approval:

7.8.1. By act or omission seek to abandon or terminate the condominium regime established by this Declaration; or

7.8.2. Partition or subdivide any Condominium Unit other than as permitted by Article XIX; or

7.8.3. Except as provided in Section 16.5 below in case of substantial loss to the Condominium Units and/or to the Common Elements of the Condominium Project to use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such Condominium Property.

SECTION 7.9. Books and Records of the Association. The Manager or the Board of Managers, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements. Owners and Mortgagees may inspect the records of receipts and expenditures of the Board of Managers pursuant to law at convenient weekday business hours. The other books, records, and papers of the Association shall at all times, during convenient weekday business hours, be subject to inspection by any Owner or Mortgagee. This Declaration, the Articles of Incorporation, and the Bylaws of the Association, as well as any Management Agreements, shall be available for inspection by any Owner or Mortgagee at the principal office of the Association where copies may be purchased at the expense of such Owner or Mortgagee.

## ARTICLE VIII

### ASSESSMENTS

SECTION 8.1. Covenant of Personal Obligation of Assessments. Every Owner, by acceptance of the deed or other instrument of transfer of his Condominium Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree with every other Owner and with the Association, and hereby does so covenant and agree to pay to the Association the (a) annual assessments, (b) special assessments, and (c) default assessments applicable to his Condominium Unit; such assessments to be established and collected as hereinafter provided. No Owner may waive or otherwise escape personal liability for the payment of the assessments provided for herein by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of his Condominium Unit. In addition to the foregoing, every Owner shall also have the obligation to pay the premiums for insurance which the Owner shall carry pursuant to Section 10.11 below and the estimated prorated amount of any insurance premiums on the Owner's Condominium Unit which are insured by a blanket insurance policy carried by the Association, real property ad

valorem taxes, and special assessments imposed by Colorado governmental subdivisions applicable to his Condominium Unit, as well as all charges for telephone, electricity, or other utilities applicable to his Condominium Unit.

SECTION 8.2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience, and general welfare of the Owners, including the improvement and maintenance of the Property and of the services and facilities located on the Property. Proper uses of the assessments levied by the Association shall include, but are not limited to, the expenditures of funds for taxes, fees, expenses, charges, levies, premiums, expenditures, or other costs of the Association for:

8.2.1. Repairing, replacing, renovating, and maintaining any of the Common Elements which is not the responsibility of the Owner pursuant to Section 9.2 below;

8.2.2. Installing, maintaining, and repairing underground utilities upon, across, over and under any part of the Condominium Project which are not conveyed to and accepted by utility companies;

8.2.3. Furnishing garbage and trash pickup to the Condominium Project;

8.2.4. Obtaining and maintaining insurance in accordance with the provisions of Article X hereof;

8.2.5. Installing, maintaining, and repairing driveways, roadways, walkways, and parking areas on any part of the Condominium Project;

8.2.6. Providing horticultural services to the Condominium Project such as mowing grass, caring for the grounds, walks and pathways, and landscaping the trees, shrubs, and grass;

8.2.7. Painting, repairing, replacing, and maintaining roofs, gutters, downspouts, exterior building surfaces, and other portions of the Common Elements;

8.2.8. Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements, and other purposes;

8.2.9. Providing for public utilities and paying for water and sewer service to each Condominium Unit;

8.2.10. Carrying out all other powers, rights, and duties of the Association specified in this Declaration and the Articles of Incorporation and Bylaws of the Association; and

8.2.11. Generally for any other purposes and uses that the Association shall determine to be necessary to meet the primary purposes of the Association.

SECTION 8.3. Assessment Years. The first assessment year for the levying of the Association's annual assessment shall commence upon the recording of this Declaration in the office of the Clerk and Recorder of Huerfano County, Colorado, and shall continue thereafter until the following 31st of December. Subsequent annual assessment years shall thereafter commence on the 1st day of January and continue until the following 31st of December.

SECTION 8.4. Amount of Total Annual Assessments. The total annual assessments levied against all Condominium Units and against the Declarant's Development Rights as described in Section 8.9, below, shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year, which estimates may include, among other things:

8.4.1. Expenses of management;

8.4.2. Premiums for all insurance which the Association is required or permitted to maintain as provided in Article X below;

8.4.3. Lighting, heating, and other utility charges, water charges, and sewer service charges for the Common Elements;

8.4.4. Wages for Association employees;

8.4.5. Firewood, if provided;

8.4.6. Expenses of snow removal;

8.4.7. Repairs and maintenance of Common Elements including but not limited to, driveways, roadways, parking areas, walkways;

8.4.8. Legal and accounting fees;

8.4.9. Any deficit remaining from a previous assessment year;

8.4.10. The creation of contingency reserves, surpluses, and sinking funds; and

8.4.11. Any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of this Declaration or the Articles of Incorporation or Bylaws of the Association.



SECTION 8.5. Apportionment of Annual Assessments. The Association's total amount of assessments for an assessment year shall be assessed to the Condominium Units in proportion to the respective undivided interest in the Common Elements appurtenant to such Units as shown in Exhibit C attached hereto, and the Owner of each Condominium Unit shall be personally liable for each such assessment which is assessed against his Condominium Unit. In case of multiple owners of a Condominium Unit, each such Owner shall be jointly and severally liable personally for each such assessment. The total annual assessment of the Association shall be apportioned among all Condominium Units as provided in this Section 8.5 and shall not be apportioned between General Common Elements and Limited Common Elements.

SECTION 8.6. Determination of Amount of Annual Assessments. The Board of Managers shall determine, levy, and assess the Association's annual assessments, which determination, levying, and assessing may be made by the Board without the vote of the members of the Association.

SECTION 8.7. Special Assessments. In addition to the annual assessments authorized above, the Association may at any time and from time to time determine, levy, and assess in any assessment year, which determination, levying, and assessing may be made by the Board of Managers with or without the vote of the members of the Association, a special assessment applicable to that particular assessment year (and for any such longer period as the Board may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Condominium Project or of any facilities located on the Condominium Project, specifically including any fixtures and personal property related to the Condominium Project. Any amounts determined, levied, and assessed pursuant to this Section 8.7 shall be assessed to the Condominium Units in proportion to the respective undivided interests in the Common Elements appurtenant to such Units as shown in Exhibit C attached hereto. All of the Owners of a particular Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments against their particular Condominium Unit. Notice in writing of the amount of such special assessment per Condominium Unit and of the time for payment of such special assessment shall be given to the Owners, and no payment shall be due less than 30 days after such notice shall have been given. In the event that any of the special assessments levied by the Association pursuant to this Section 8.7 shall be used for the construction of the Condominium Project or of any facilities located on the Condominium Project and if the total amount of special assessments levied for such construction shall exceed \$10,000 (i.e., the total amount of such special assessments for all Condominium Units as an aggregate, and not \$10,000 per Condominium Unit), then the use of special

assessments for such construction shall require the approval of all of the Owners of at least two-thirds of the Condominium Units and the First Mortgagees of at least two-thirds of the Condominium Units.

SECTION 8.8. Due Dates for Assessment Payments.

Unless otherwise determined by the Association, the annual assessments and any special assessments which are to be paid in monthly installments shall be paid monthly in advance and shall be due and payable to the Association at its office or as the Association may otherwise direct in any Management Agreement, without notice (except for the notices required by Sections 8.6 and 8.7 above), on the first day of each month. If any such monthly installment shall not be paid within 15 days after it is due and payable, then the Board may assess a "late charge" in an amount not exceeding \$50 to cover the extra expenses involved in handling such delinquent assessment installment. An Owner's monthly assessment shall be prorated if the ownership of a Condominium Unit commences or terminates on a day other than the first day or last day, respectively, of a month. If the First Mortgagee of any Condominium Unit requires that the Owner of such Unit make monthly payments into escrow with the First Mortgagee for the estimated hazard insurance premiums and/or general property taxes applicable to such Condominium Unit, then such Owner may make such monthly payments into such escrow reserves, rather than making payments, to the Association.

SECTION 8.9. Declarant's Obligation to Pay Assessments. Declarant shall be obligated to pay all annual and special assessments (including monthly installments thereof) on each Condominium Unit owned by it until either:

8.9.1. Conveyed by the Declarant to an Owner; or

8.9.2. Leased by the Declarant for the first time to a bona fide tenant pursuant to a written agreement obligating the tenant to pay such assessments.

Declarant and its successors and assigns with respect to the Development Rights shall pay a monthly assessment determined as provided in this Section. Such assessment shall be payable and enforceable in accordance with the provisions of this Article VIII. Such assessment shall be used by the Association for the purposes as stated in this Article VIII. Such enforcement and other provisions in Article VIII shall apply to the Declarant with respect to the Development Rights, notwithstanding any provision refers expressly only to "Owners." The amount of such assessment shall be reasonably determined by the Association by allocating Association expenses between Owners of Units and the Declarant as the owner of the Development Rights on a fair and equitable basis subject to the following provisions:

(A) Real property taxes shall be allocated based upon the ratio of the value of the land on which proposed Units may be constructed (including an allocable portion of land adjacent to such improvements) to the value of the entire Project, including improvements;

(B) Insurance premiums and fidelity bond premiums shall be allocated in the same manner as real property taxes;

(C) Hazard insurance premiums shall be allocated solely to the Owners of Units;

(D) Maintenance, snow removal, and landscaping expenses shall be allocated based upon the specific services performed with respect to Units and related common areas as opposed to land where proposed Units may be constructed;

(E) Utility charges shall be allocated solely to the Owners of Units; and

(F) Legal and accounting fees and expenses of management of the Association shall be allocated in the same manner as real property taxes.

SECTION 8.10. Lien for Assessments. The annual and special assessments (including monthly installments) provided for in this Article VIII and any and all default assessments arising under the provisions of Sections 3.3, 7.2, 12.2, or 13.4 (together with any and all interest, costs, late charges, expenses, and attorneys' fees which may arise under the provisions of Section 8.11) shall be burdens running with, and a perpetual lien in favor of the Association upon the specific Condominium Unit (or the Development Rights, as the case may be) to which such assessments apply. To evidence such lien upon a specific Condominium Unit or the Development Rights, the Association shall prepare a written lien notice setting forth the description of the Condominium Unit or the Development Rights, the amount of assessments with respect to such Unit or the Development Rights which are unpaid as of the date of such lien notice, the rate of default interest as set by the Bylaws and Section 8.11, the name of the Owner or Owners of such Unit or the Development Rights, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Managers or by an officer of the Association or by the manager or any officer performing management services, and shall be recorded in the office of the Clerk and Recorder of Huerfano County, Colorado. Any such lien notice shall not constitute a condition precedent nor delay the attachment of the lien but such lien is a perpetual lien upon the Condominium Unit or the Development Rights and attaches without notice at the beginning of the first day of any period for which any assessment is levied or assessed.

SECTION 8.11. Effect of Nonpayment of Assessments. If any annual or special assessment (or any monthly installment) is

not fully paid within 30 days after it becomes due and payable, or if any default assessment shall arise under the provisions of Sections 3.3, 7.2, 12.2, or 13.4 of this Declaration, then in any of such events and as often as the same may happen, (i) interest shall accrue at the Maximum Rate (or at such lower rate as may be established from time to time by the Bylaws), from the due date on any amount thereof which was not paid within such 30-day period or on the amount of assessment in default, whichever shall be applicable, (ii) the Association may declare due and payable all unpaid monthly or other installments of the annual assessment or any special assessment otherwise due during the calendar year during which such default occurred; and (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same and may also proceed to foreclose its lien against the particular Condominium Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages in and through the courts. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments (or any monthly installment) may be commenced and pursued by the Association without foreclosing or, in any way, waiving the Association's lien. In the event that any such assessment (or monthly installment) is not fully paid when due and the Association shall commence such an action (or shall counterclaim or cross-claim for such relief in any action) against any Owner personally obligated to pay them or shall proceed to foreclose its lien against the particular Condominium Unit, then all unpaid monthly installments of annual and special assessments and all default assessments (including any such installments or assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 8.8 above, any accrued interest under this Section 8.11, the Association's costs, expenses, and attorneys' fees incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay them and from the proceeds from the foreclosure sale of the particular Condominium Unit in satisfaction of the Association's lien. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter foreclosing or attempting to foreclose its lien for any subsequent assessments (or monthly installments) which are not fully paid when due or for any subsequent default assessments. The Association shall have the power and right to bid in or purchase any Condominium Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership of such Condominium Unit, convey, or otherwise deal with such Unit.

SECTION 8.12. Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Condominium Unit to pay all assessments relating to such Condominium Unit, and notwithstanding the Association's perpetual lien upon a Condominium Unit for such assessments, all successors

in interest to the fee simple title of a Condominium Unit shall be jointly and severally liable with the prior Owner or Owners of such Unit for any and all unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees against such Condominium Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor but only if such successors in interest expressly assume such liability. Provided, however, a successor in interest to the fee simple title of a Condominium Unit shall be entitled to rely upon the existence, status, or absence of unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 8.14 below. The foregoing liability of successors in interest for all unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees against their Condominium Unit shall not apply to any First Mortgagee or First Mortgagee's nominee who shall, in good faith and not for the primary purpose of circumventing this Section 8.12, acquire the Condominium Unit through a deed in lieu of foreclosure proceedings or through foreclosure proceedings.

SECTION 8.13. Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Condominium Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, C.R.S. 1973, as amended. The Association's perpetual lien on a Condominium Unit for assessments shall be superior to all other liens and encumbrances except:

8.13.1. Real property ad valorem taxes and special assessment liens duly imposed by a Colorado government, political subdivision, or special taxing district; and

8.13.2. The lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens.

With respect to the foregoing subpart 8.13.2 of this Section 8.13, any First Mortgagee who acquires title to a Condominium Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Condominium Unit free of any claims for unpaid Association assessments, interest, late charges, costs, expenses, and attorneys' fees against the Condominium Unit which accrue before the time such First Mortgagee or purchaser acquires title to the Condominium Unit. All other persons obtaining a lien or encumbrance on any Condominium Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for assessments, interest, late charges, costs, expenses, and attorneys' fees, as provided in

this Article VIII, whether or not such consent be specifically set forth in the instrument creating any such lien or encumbrance. Sale or other transfer of any Condominium Unit, except as provided above with respect to First Mortgagees, shall not affect the Association's lien on such Unit for assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing before the time such First Mortgagee or purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment of such assessments.

SECTION 8.14. Statement of Status of Assessments.

Upon 10 days' written notice to the Manager or Board of Managers and payment of a reasonable fee not to exceed \$100, any Owner, prospective purchaser of a Condominium Unit, or Mortgagee shall be furnished a statement of the Owner's account setting forth:

8.14.1. The amount of any unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Condominium Unit;

8.14.2. The amount of the current monthly installments of the annual assessment and the date that the next monthly installment is due and payable;

8.14.3. The date of the payment of any installments of any special assessments then existing against the Condominium Unit; and

8.14.4. Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Board of Managers, by an officer of the Association, or by a manager, the information contained in such certificate shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on it in good faith.

SECTION 8.15. Mortgagees May Pay Assessments and Cure Defaults. If any assessment, or monthly installments of any assessment on any Condominium Unit shall not be paid by the Owner of such Condominium Unit within 30 days after it is due, or upon notice to an Owner of default of any provision of this Declaration, the Articles of Incorporation, or the Bylaws of the Association, the Association shall send a written notice of such default to any First Mortgagee of such Condominium Unit and may (but shall not be required to) send a notice of default to any other Mortgagee of such Condominium Unit. Such written notification shall be sent to the address previously given to the Association by such First Mortgagee or Mortgagee, but if no such address has been given, then such notice shall be sent to the address of such Mortgagee or First Mortgagee as shown on the recorded deeds of trust evidencing their interests. Any Mortgagee may (but shall not be required to) pay such assessment

or monthly installments, together with any other amounts secured by the Association's lien created by this Article VIII, and may (but shall not be required to) cure any such default.

SECTION 8.16. Liens. Except for annual, special, and default assessment liens as provided in this Declaration, mechanics' liens (except as provided in Section 12.1 below), tax liens, and judgment liens and other liens validly arising by operation of law and liens arising under Mortgages, there shall be no other liens obtainable against the Common Elements or any interest in the Common Elements of any Condominium Unit.

## ARTICLE IX

### MAINTENANCE RESPONSIBILITY

SECTION 9.1. Owner's Rights and Duties with Respect to Interiors. Each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of such Owner's Individual Air Space Unit and all walls, floors, ceilings, and doors within such boundaries.

SECTION 9.2. By the Owner. The Owner shall have the obligation to maintain and keep in repair the interior of the Condominium Unit at his expense, including the fixtures and utilities located within such Condominium Unit to the extent current repair shall be necessary in order to avoid damaging other Condominium Units or the Common Elements. All fixtures, equipment, and utilities installed within the Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. No Owner shall do any act or any work that will impair the structural soundness of the improvements or impair the proper functioning of the utilities, heating, or plumbing systems or integrity of the Buildings or impair any easement or hereditament. Each Owner shall also maintain and keep in good repair all appurtenant Limited Common Elements at such Owner's expense including plumbing located within the General Common Elements but servicing only such Owner's Unit. An Owner shall not be responsible for repair occasioned by casualty as defined in Article XVI below unless such casualty is due to the act or negligence of the Owner, or guests, invitees, or tenants of such Owner. An Owner shall reimburse the Association for any expenditure incurred for replacement or repair of any Common Element and facility damaged through fault of an Owner, or guests, invitees, or tenants of such Owner and the Association shall be entitled to assess the Owner for such amounts which shall be payable, collectible, and enforceable in the same manner as assessments pursuant to Article VIII above. No Owner shall alter any Common Elements without the prior written consent of the Association.

SECTION 9.3. By the Association. The Association shall maintain and keep in good repair, replace, and improve, as a Common Expense, all the Common Elements not required to be maintained and kept in good repair by an Owner. The Association shall have no obligation to maintain or repair any buildings or improvement while under construction by Declarant in the exercise of Declarant's Development Rights.

## ARTICLE X

### INSURANCE AND FIDELITY BONDS

SECTION 10.1. Duty to Obtain and Maintain Insurance. The Association shall obtain and maintain in full force and effect at all times the insurance coverage as provided in this Article X, which insurance coverage shall be provided by companies duly authorized to do business in the State of Colorado.

SECTION 10.2. Hazard Insurance. The Association shall obtain, from an insurance carrier acceptable to the Federal Home Loan Mortgage Corporation and to the Federal National Mortgage Association, hazard insurance on the Condominium Project in the form of a "master" or "blanket" policy of property insurance, including protection against damage by hail or lightning, in an amount equal to the full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage) of the Condominium Project which shall include all building service equipment and the like and any fixtures or equipment within a Condominium Unit which are normally financed under a First Mortgage. Such master or blanket policy shall include an "Agreed Amount and Inflation Award Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent. The policy contract and forms for such master or blanket policy shall not provide that contributions or assessments may be made against any First Mortgagee or become a lien on any Condominium Unit superior to the lien of the First Mortgagee. In addition, such master or blanket policy shall afford protection against at least the following:

10.2.1. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

10.2.2. Such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to this Condominium Project.

SECTION 10.3. Liability Insurance. The Association shall obtain a comprehensive policy of public liability insurance



covering all of the Common Elements in the Condominium Project. Coverage of such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the maintenance, operation, or use of the Common Elements and legal liability arising out of lawsuits related to employment contracts of the Association. Such comprehensive policy of public liability insurance shall include a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurance company from denying the claim of any Owner because of the negligent acts of the Association or any other Owner, with such limits as may be considered acceptable by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association (but not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence). Such comprehensive policy of public liability insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to the Condominium Project.

SECTION 10.4. Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of the Association's officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including officers, employees, and agents of the Managing Agent, if any. Such fidelity coverage or fidelity bonds shall meet the following requirements:

10.4.1. The Association shall be named as an obligee;

10.4.2. The coverage or bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Condominium Project, including reserves, unless a greater amount is required by the Federal Home Loan Mortgage Corporation (or its seller/Service) or Federal National Mortgage Association; and

10.4.3. The coverage or bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

SECTION 10.5. Flood Insurance. If the Condominium Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Condominium Project must be maintained by the Association in an amount which is lesser of 100% of the current replacement costs, exclusive of land, foundation, excavation, and other items normally excluded from coverage, for all of the Buildings and other insurance property, or the maximum limit of coverage available under the

National Flood Insurance Act of 1968, as amended. Such policy must meet the criteria of the most recent Guidelines issued by the federal insurance administrator, and be in the form of the standard policy issued by members of the National Flood Insurers Association or a policy which meets the criteria set forth in the Guidelines published by the Flood Insurance Administration in the Federal Register on February 17, 1978.

SECTION 10.6. Provisions Common to Hazard Insurance, Liability Insurance, Fidelity Insurance and Flood Insurance. Any insurance coverage obtained by the Association under the provisions of Sections 10.2, 10.3, 10.4 and, if applicable, 10.5 hereof shall be subject to the following provisions and limitations:

10.6.1. The named insured under any such policies shall be the Association, as a trustee for the Owners, or its authorized representative, including any trustee with which the Association may enter into any insurance trust agreement, or any successor trustee (each of which is sometimes referred to in this Section 10.6 as the "Insurance Trustee") who shall have exclusive authority to negotiate losses under such policies and who shall, upon appointment, be designated by the Owners, without any further act of the Owners, as the attorney-in-fact for all the Owners with respect to purchasing and maintaining such insurance including the collection and appropriate disposition of insurance proceeds, negotiation of losses and execution of releases, execution of all documents, and the performance of all other such acts necessary to accomplish such purposes.

10.6.2. In no event shall the insurance coverage obtained and maintained pursuant to such sections be brought into contribution with insurance purchased by the Owners or their Mortgagees;

10.6.3. The policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Owners collectively, or (b) by failure of the Association to comply with any warranty or condition with regard to any portion of the Condominium Project over which the Association has no control;

10.6.4. The policies shall provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insureds named therein, including as appropriate all scheduled holders of a First Mortgage, the Federal Home Loan Mortgage Corporation (or its Seller/Service) or the Federal National Mortgage Association;

10.6.5. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association and any Owner or their respective agents, employees, or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

10.6.6. All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law;

10.6.7. Evidence of insurance shall be issued to each Owner and Mortgagee on request;

10.6.8. All policies shall contain a standard mortgagee clause which names the Federal National Mortgage Association or its servicer, and its successors and assigns, in the policy if the Federal National Mortgage Association is a holder of one or more First Mortgages. The effect of such clause must be that the coverage of the mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the mortgagor, unless such coverage is prohibited by law;

10.6.9. All policies shall provide that the Association policy is primary in the event that an Owner has other insurance covering the same loss. All policy contracts shall provide that no contribution or assessment may be made against the Federal National Mortgage Association or may become a lien on the property superior to the lien of the First Mortgage of the Federal National Mortgage Association; and

10.6.10. All Eligible Mortgage Holders, guarantors and insurers, shall receive timely written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

SECTION 10.7. Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate personal liability insurance shall be obtained by the Association to protect the officers and directors of the Association from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

SECTION 10.8. Workmen's Compensation Insurance. The Association shall obtain workmen's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

SECTION 10.9. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

SECTION 10.10. Insurance Premiums. Insurance premiums for the insurance coverage provided for in this Article shall be

a common expense to be paid by monthly assessments levied by the Association. Subject to the provisions of Section 8.8 above, such payments shall be held in a separate trust account maintained by the Association and used solely for the payment of the premiums for insurance hereinabove provided for as such premiums become due.

SECTION 10.11. Insurance Obtained by Owners. It shall be the responsibility of each Owner, at such Owner's expense, to obtain title insurance on such Owner's Condominium Unit upon purchase or resale, except that Declarant shall provide title insurance for the purchase by the initial Owner, and to maintain hazard insurance on such Owner's personal property, furnishings, and all portions of the Owner's Individual Air Space Unit including fixtures and interior finishes, and public liability insurance covering such Owner's Individual Air Space Unit. In addition, such Owner may obtain such other and additional insurance coverage on and in relation to such Condominium Unit as such Owner in such Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association nor cause the diminution or termination of any insurance coverage obtained by the Association nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association shall be entitled to collect the amount of such proceeds from an Owner as if the amount were a delinquent assessment, including the right of the Association to a lien and foreclosure of an assessment lien. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners.

SECTION 10.12. Construction. The Association shall not have any obligation to provide any hazard or liability insurance whatsoever with respect to the construction of any improvements on the Property undertaken by Declarant in furtherance of Declarant's Development Rights.

## ARTICLE XI

### CONVEYANCES AND TAXATION OF CONDOMINIUM UNITS

SECTION 11.1. Contracts to Convey Entered into Before Recording of Condominium Map and Declaration. A contract or other agreement for the sale of a Condominium Unit entered into before the filing for record of the Condominium Map and this Declaration in the office of the Clerk and Recorder of Huerfano County, Colorado, may legally describe such Condominium Unit in substantially the manner set forth in Section 11.2 below and may

indicate that the Condominium Map and this Declaration are to be recorded.

SECTION 11.2. Contracts to Convey and Conveyances Subsequent to Recording of Condominium Map and Declaration. Subsequent to the recording of the Condominium Map and this Declaration, contracts to convey, instruments of conveyance of Condominium Unit, and every other instrument affecting title to a Condominium Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority or any usage or requirement of law:

Condominium Unit \_\_\_\_\_ in Condominium Building \_\_\_\_\_, Aspen at Panadero Condominiums, Huerfano County, Colorado, according to the Condominium Map for Aspen at Panadero Condominiums, recorded \_\_\_\_\_, 1986, at Map No. \_\_\_\_\_ and at reception number \_\_\_\_\_, in the records of the office of the Clerk and Recorder of Huerfano County, Colorado, and as defined and described in the Condominium Declaration for Aspen at Panadero Condominiums recorded \_\_\_\_\_, 1986, in Book \_\_\_\_\_, at Page \_\_\_\_\_ in said records.

SECTION 11.3. Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, mortgage, deed of trust, or other instrument affecting the title to a Condominium Unit which legally describes such Condominium Unit substantially in the manner set forth in Section 11.2 above shall be construed to describe the Individual Air Space Unit, together with the undivided interest in the Common Elements appurtenant to such Unit, together with all fixtures and improvements therein contained (unless any fixtures or improvements are Common Elements), and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservation, rights-of-way, and other provisions contained in this Declaration and the easement of enjoyment to use the Common Elements.

SECTION 11.4. Separate Tax Assessments. Upon the recording of this Declaration and the filing of the Condominium Map for record in Huerfano County, Colorado, Declarant shall deliver a written notice to the Assessor of Huerfano County, Colorado, as provided by law, which notice shall set forth the description of the Condominium Units, so that thereafter all taxes, assessments, and other charges by the State or any political subdivision of any special improvement district or any other taxing agent or assessing authority shall be assessed against and collected on each Condominium Unit, each of which shall be carried on the tax records as a separate and distinct parcel for that purpose. For the purpose of such assessment, valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional interest in the Common

Elements appurtenant to such Units. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessment, or other governmental charge shall divest or in any way affect the title to any other Condominium Unit.

## ARTICLE XII

### MECHANICS' LIENS

SECTION 12.1. Mechanics' Liens. Subsequent to the filing of the Map and recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Condominium Unit with the consent of or at the request of the Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting it, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien for labor performed or for materials furnished in connection with work performed on such Owner's Condominium Unit against the Condominium Unit of another or against all or part of the Common Elements.

SECTION 12.2. Enforcement by the Association. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper) the Association shall enforce the indemnity provided by the provisions of Section 12.1 above by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge any such mechanics' lien, including all costs and reasonable attorneys' fees incidental to such lien, and obtain a discharge of such lien. If the Owner of the Condominium Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions of such claim from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 12.2 and such amount to be indemnified shall automatically become a default assessment determined and levied against such Condominium Unit and the Association may proceed in accordance with Section 8.11 above.

## ARTICLE XIII

### USE RESTRICTIONS

SECTION 13.1. Compliance with Zoning. All Condominium Units shall be used for residential purposes only and shall not

be used for any business, manufacturing, or commercial purpose whatsoever; provided, however, if the appropriate zoning so allows and if prior written approval of the Association is obtained, an Owner may use a specifically designated portion of his Condominium Unit as a home business office, which approval may be withdrawn or terminated by the Association at any time, and any Condominium Unit may be leased by the Owner subject to the provisions of this Article XIII.

SECTION 13.2. Conveyance of Condominium Units. All Condominium Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the Protective Covenants, as the same may be amended from time to time.

SECTION 13.3. Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Association.

SECTION 13.4. Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part of the Common Elements, which would result in the cancellation of the insurance on the Condominium Project, or any part of the Condominium Project, or in an increase in the rate of the insurance on the Condominium Project, or any part of the Condominium Project, over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part of the Common Elements, which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part of the Common Elements shall be committed by any Owner, or by any member of the Owner's family, or by any guest, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, invitees, or contract purchasers. Failure to so indemnify shall be a default by such Owner under this section, and such amount to be indemnified shall automatically become a default assessment determined and levied against such Condominium Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as provided in Section 8.11 above.

SECTION 13.5. Structural Alterations and Exterior Appearance. No structural alterations to any Condominium Unit (including the construction of any additional skylight, window, or door) or any Common Element shall be made or caused to be made by any Owner without the prior written approval of the Association. No work shall be undertaken which may result in changes in the appearance of any building or Unit except as permitted by the Association.

SECTION 13.6. Rules and Regulations. No Owner shall violate the rules and regulations, as adopted from time to time by the Association pursuant to Section 7.5 above, for the use of the Condominium Units and the Common Elements.

SECTION 13.7. Antennas. Without the prior written approval of the Association, no exterior television, cable television, radio, or other communication antennas, aerials or dishes of any type shall be placed, allowed, or maintained on any portion of the Common Elements or the Condominium Project.

SECTION 13.8. Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be erected or maintained for any purpose whatsoever except such signs as have been approved by the Association. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Condominium Project only with the prior written approval of the Association. Notwithstanding anything contained in this provision to the contrary, Declarant or its agents shall have the right to erect signs during the initial sales period in connection with Declarant's sales efforts without prior written approval of the Association.

SECTION 13.9. Water and Sewage. Each structure designed for occupancy or use by human beings shall connect with the water and sewage facilities as the Association may approve. No private well shall be used as a source of water for human consumption or irrigation, nor shall any facility other than those provided as set out above be used for disposal of sewage.

SECTION 13.10. Trash. No trash, ashes, or other refuse or debris may be thrown or dumped on the Property. The burning of refuse out-of-doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed, or used by any person except as approved by the Association. Waste materials, garbage, and trash shall be kept in sanitary containers which do not make excessive noise when handled and shall be enclosed and screened from public view and protected from disturbance and shall be disposed of with reasonable promptness. The Owner of any Condominium Unit subject to these covenants shall keep the premises free of trash, refuse, or debris of any kind, whether such Condominium Unit is vacant or occupied.

SECTION 13.11. Animals. Dogs, cats, or other customary household pets may not be kept on the Property without



the written approval of Association. Breeding of any animals on the Property is specifically prohibited.

SECTION 13.12. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Condominium Unit, nor shall anything be done or placed on the Property which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

SECTION 13.13. Abandoned, Inoperable, or Oversized Vehicles. No abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Property. The Association shall provide the Owner with a written notice describing the "abandoned or inoperable vehicle" and the notice shall request removal of such vehicle within two weeks thereafter. If the vehicle is not removed within such two-week period, the Association shall have the right to remove the vehicle without liability to it, and the expenses of removal shall be charged to the Owner. This section shall not apply to vehicles parked by Owners while absent from the Condominium Project. An Owner shall provide the Association with notice of absences extending beyond two weeks in order to avoid removal of his vehicle as provided in this Section. No oversized vehicles of any kind shall be stored or parked on any portion of the Property. "Oversized" vehicles, for purposes of this Section, shall be vehicles which are too high to clear the entrance to a residential garage. No unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, or other unsightly equipment and machinery shall be stored at the Condominium Project.

SECTION 13.14. Annoying Lights, Sounds or Odors. No lights shall be emitted from any Condominium Unit which are unreasonably bright or cause unreasonable glare; no sound shall be emitted from any Condominium Unit which is unreasonably loud or annoying; and no odor shall be emitted from any Condominium Unit which is noxious or offensive to others.

SECTION 13.15. Trailers and Recreational Vehicles. No mobile home, trailer, automobile, truck, pickup, camper, or other vehicle may be used for temporary or permanent sleeping or living purposes while on the Property.

SECTION 13.16. Declarant's Use. Notwithstanding any provisions contained in this Declaration to the contrary, it shall be expressly permissible and proper for Declarant and Declarant's employees, agents, independent contractors, successors, and assigns involved in the improvement of Condominium Buildings or Condominium Units or of the Condominium Project or in the development or construction of any other adjacent condominium project or the provision of utility service therefor to perform such activities and to maintain upon such portions of the Condominium Project as Declarant deems necessary such facilities as in the sole opinion of Declarant may be reasonably required, convenient, necessary, or incidental to the

improvement and sale of Condominium Units and to the improvement of the Condominium Project, specifically including, without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model Units, and sales offices. Provided, however, neither the Declarant, the Declarant's employees, agents, independent contractors, successors, or assigns nor any of them shall perform any activity or maintain any facility on any portion of the Condominium Project in such a way as to unreasonably interfere with or disturb any Owner of a Condominium Unit, or to unreasonably interfere with the use, enjoyment, or access of such Owner, and such Owner's family members, guests, and invitees. It is expressly understood that Declarant may be obliged to block access to a portion of the Property in the exercise of its rights hereunder, but Declarant shall use its best efforts to minimize the interference with the use and enjoyment of all Owners and their family members, guests, and invitees.

SECTION 13.17. No Outside Clotheslines. No laundry or wash shall be dried or hung outside any Condominium Building.

SECTION 13.18. Parking and Auto Repair. No resident shall park any automobiles in any street or portion of the Common Elements except within garages, carports, or designated parking areas. The Association may from time to time designate exclusive parking spaces to be used by Owners and their guests and invitees. Such designation shall not, however, make such parking places Limited Common Elements. No work of automobile repair shall be performed on the Common Elements except in emergency cases.

SECTION 13.19. Outside Burning. There shall be no exterior fires, except pursuant to rules and regulations adopted from time to time by the Board of Managers. No Owner or Owners shall permit any condition in his Unit which creates a fire hazard or is in violation of fire prevention regulations.

SECTION 13.20. Preservation of Trees and Shrubs. No trees or shrubs shall be removed from any of the Common Elements without the prior consent of the Association.

SECTION 13.21. Leasing of Condominium Units. The Owner of a Condominium Unit shall have the right to lease such Owner's Condominium Unit, provided such lease and lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration, the Protective Covenants, and the provisions of the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply therewith shall be a default under the lease.

## ARTICLE XIV

EASEMENTS

SECTION 14.1. Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, or any portion of the Property, and as shown on the recorded Condominium Map.

SECTION 14.2. Easements for Encroachments. The Condominium Project, and all portions of the Condominium Project, shall be subject to an easement for encroachments created by construction and overhangs, if any, and for settling, shifting, and movement of any portion of the Condominium Project. A valid easement for such encroachments and for the maintenance thereof shall exist. If a Condominium Building or Condominium Unit is partially or totally destroyed, and then rebuilt, the Owners of the Condominium Units so rebuilt, the other Owners, and the Association hereby agree that minor encroachments of the rebuilt Individual Air Space Units upon the Individual Air Space Units of other rebuilt Condominium Units shall be permitted and that a valid easement for such encroachments and the maintenance of such encroachments shall exist. Such encroachments shall not be considered to be encumbrances upon any part of the Condominium Project. Encroachments referred to in this Section include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of any Condominium Building or Condominium Unit constructed on the Property, by error in the Condominium Map by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Condominium Project.

SECTION 14.3. Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone and electricity. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical and telephone services to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain electrical and telephone wires, circuits, and conduits on, above, across, and under the roofs and exterior walls of the Condominium Buildings and any other buildings which are constructed on the Property. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, Declarant, or the Board of Managers, shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. The easements provided for in this Section 14.3 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

SECTION 14.4. Reservation for Expansion. Declarant hereby reserves to it and for Owners of Condominium Units of all future phases of the Condominium Project a perpetual easement and right-of-way and access over, upon, and across the Property for construction, utilities, drainage, ingress and egress, and for use of the General Common Elements. The location of such easement and right-of-way may be made certain by the Declarant or the Association by recorded documents.

SECTION 14.5. Reservation of Easements, Exceptions, and Exclusions. Declarant reserves to it and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions consistent with the condominium ownership of the Condominium Project for the best interest of all of the Owners and the Association, in order to serve all the Owners within the Condominium Project. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, and exclusions convenient or necessary, in its sole discretion, for the use and operation of any other property of the Declarant, as long as it does not hamper the enjoyment of the Condominium Project by the Owners.

SECTION 14.6. Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

SECTION 14.7. Maintenance Easement. An easement is hereby granted to the Association and any Manager and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain maintenance and storage facilities on the Common Elements for use by the Association.

SECTION 14.8. Drainage Easement. An easement is hereby reserved to Declarant and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Condominium Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

SECTION 14.9. Walkway Easements. Declarant, for itself, its successors and assigns, and all guests, employees, business invitees, Owners, and all other persons present thereon by permission or invitation of Declarant does hereby create a

perpetual easement and right-of-way to use the system of walkways now or hereafter constructed upon the Property for access purposes to or across the Property.

SECTION 14.10. Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Individual Air Space Units or may be conveniently accessible only through the Individual Air Space Units. The Owners of other Individual Air Space Units and the Association, as appropriate, shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Individual Air Space Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Individual Air Space Unit. Subject to the provisions of Section 7.2 above, damage to the interior of any part of an Individual Air Space Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Individual Air Space Unit at the instance of the Association or of Owners shall be an expense of all the Owners.

SECTION 14.11. Declarant's Rights Incident to Construction, Sales and Marketing. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Common Elements and the Property and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the complete construction and sale of the Condominium Project including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Condominium Unit Owner, or family members, guests, or invitees to or of a Condominium Unit Owner. It is expressly understood that Declarant may be obliged to block access to a portion of the Property in the exercise of its rights under this Section, but Declarant shall use its best efforts to minimize the interference with the use and enjoyment of all Owners and their family members, guests, and invitees.

SECTION 14.12. Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article XIV, even though no specific reference to such easements or to this Article XIV appears in the instrument for such conveyance. On or after December 31, 2001, Declarant waives any and all rights reserved to Declarant pursuant to Sections 14.4, 14.5, and 14.11 hereof. No such waiver shall affect any of the rights accruing to the Association or Owners under such provisions.

ASSOCIATION AS ATTORNEY IN FACT

SECTION 15.1. Appointment. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney in fact in such Owner's name, place, and stead for the purpose of dealing with the Condominium Project upon its damage, destruction, condemnation, or obsolescence as hereinafter provided in Articles XVI, XVII, and XVIII. In addition, the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, is hereby appointed as attorney in fact hereunder for the purpose of purchasing and maintaining insurance under Article X, including: the collection and appropriate disposition of the proceeds of such insurance; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners and their First Mortgagees, as their interests may appear. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney in fact as provided in this Section 15.1.

SECTION 15.2. General Authority. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney in fact.

## ARTICLE XVI

DAMAGE OR DESTRUCTION

SECTION 16.1. Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Condominium Project, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Condominium Project so damaged or destroyed. "Repair and reconstruction" as used in this Article XVI shall mean restoring the damaged or destroyed part of the Condominium Project to substantially the same condition in which it existed before the damage or destruction, with each Individual Air Space Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. "Minor" damages or destruction shall mean damages or destruction for which the cost of repair or reconstruction is less than \$5,000.

SECTION 16.2. Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Condominium Project damaged or destroyed. As attorney in fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction and no consent or other action by any Owner shall be necessary to effect such repair and reconstruction.

SECTION 16.3. Funds for Repair and Reconstruction. Subject to the provisions of Sections 10.2 and 10.6 above, the proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction.

SECTION 16.4. Insurance Proceeds Sufficient to Repair. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement, shall be applied by the Association as attorney in fact to such reconstruction, and the improvement shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney in fact to effect the repair and restoration of the improvement. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

SECTION 16.5. Insurance Proceeds Insufficient to Repair; Special Assessment; Remedies for Failure to Pay Special Assessment. If the insurance proceeds are insufficient to repair and reconstruct the improvement, and if such damage is not more than 70% of the total replacement cost of all of the Condominium Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney in fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units. Such special assessment shall be a Common Expense and made pro rata according to each Owner's percentage of responsibility and shall be due and payable within 30 days after written notice of such special assessment as provided in Article VIII above. The Association shall have full authority, right, and power as attorney in fact to effect the repair, replacement, or restoration of the improvement using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for in this Section shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article VIII above. In addition, the Association, as attorney in fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall record a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney in fact, pursuant to the provisions of this Section. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and

repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at the Maximum Rate on the amount of the assessment, and all attorneys' fees. The proceeds derived from the sale of such Condominium Unit shall be disbursed by the Association, as attorney in fact, in the following order:

16.5.1. For payment of real property ad valorem taxes, special assessment liens duly imposed by a governmental subdivision;

16.5.2. For payment of the balance of the lien of any First Mortgage;

16.5.3. For payment of unpaid Association assessments, interest, costs, late charges, expenses, and attorneys' fees;

16.5.4. For payment of junior mortgages in the order of and to the extent of their priority; and

16.5.5. The balance, if any, shall be paid to the Owner of the Condominium Unit.

If the insurance proceeds are insufficient to repair and reconstruct the improvement, and if such damage is more than 70% of the total replacement cost of all of the Condominium Units in this Condominium Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney in fact, using the proceeds of insurance and the proceeds of a special assessment made against all of the Owners and their Condominium Units, provided, however, that Owners representing an aggregate ownership interest of 80% or more of the Common Elements and first Mortgagees of record encumbering 67% of the Condominium Units may agree not to repair or reconstruct the improvement; and in such event, the Association shall promptly record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire Condominium Project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney in fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation, and Bylaws. Assessments for Common Expenses shall not be abated during the period before sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's proportionate interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney in fact, shall promptly disburse the total amount of each of such accounts,



without contributions from one account to another, toward the partial or full payment of the lien of any First Mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Condominium Unit Owner's proportionate interest in the Common Elements. The total funds of each account shall be disbursed, without contribution, from one account to another by the Association, as attorney in fact, for the same purposes and in the same order as is provided in Section 16.5.1 through 16.5.5 of this Declaration.

SECTION 16.6. Notice of Loss to First Mortgagees. If there shall be any damage or destruction to, or loss or taking of:

16.6.1. Any Condominium Unit which shall be in excess of \$1,000, then notice of such damage, loss, or taking shall be given by the Association to the First Mortgagee on that Condominium Unit; and

16.6.2. The Common Elements which shall be in excess of \$25,000, then notice of such damage, loss, or taking shall be given by the Association to each First Mortgagee.

SECTION 16.7. Repairs. All repairs and reconstruction contemplated by this Article XVI shall be performed substantially in accordance with this Declaration, the Map, and the original plans and specifications, unless other action is approved by the Association and by First Mortgagees holding Mortgages on Units representing 51% of the votes of Units subject to First Mortgages.

SECTION 16.8. Consent of the Eligible Mortgage Holders. Without the consent of at least 51% or more of Eligible Mortgage Holders (based on one vote for each Condominium Unit subject to a Mortgage held by an Eligible Mortgage Holder), the following actions shall not be taken:

16.8.1. Any restoration or repair of the Condominium Project after substantial damage due to an insurable hazard which shall not be substantially in accordance with the Declaration and the original plans and specifications;

16.8.2. Any election to terminate the status of the Condominium Project after substantial destruction; and

16.8.3. Reallocation of the ownership interests shown on Exhibit C after a partial destruction.

## ARTICLE XVII

OBSOLESCENCE

SECTION 17.1. Adoption of Plan; Rights of Owners. The Owners may agree that the Condominium Project is obsolete and may adopt a written plan for the renewal and reconstruction of the Condominium Project. Such a plan shall require the approval of Owners (other than Declarant) representing at least 67% of the Condominium Units, and at least 67% of the First Mortgagees (based on one vote for each First Mortgage held) at the time the plan is adopted. The expense of such renewal and reconstruction may be funded by borrowing or by special assessment. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the office of the clerk and recorder of Huerfano County, Colorado.

## ARTICLE XVIII

CONDEMNATION

SECTION 18.1. Consequences of Condemnation. If at any time or times during the continuance of the Condominium Project all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of such taking or in avoidance of such taking, then all compensation, damages, or other proceeds therefrom, the sum of which is hereinafter referred to as the "Condemnation Award," shall be payable to the Association, and the provisions of this Article XVIII shall apply.

SECTION 18.2. Complete Taking. If the entire Condominium Project is taken or condemned or sold or otherwise disposed of in lieu of such taking or in avoidance of such taking, the condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. Such award shall be apportioned among the Owners and the Mortgagees on the basis of the undivided interest in the Common Elements of the Units in which such Owners and Mortgagees have an interest. Provided, however, if a standard different from the value of the Condominium Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall, as soon as practical, determine the share of the Condemnation Award to which each Owner and Mortgagee is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practical as provided in Sections 16.5.1 through 16.5.5, above.

SECTION 18.3. Partial Taking. If less than the entire Condominium Project is taken or condemned or sold or otherwise disposed of in lieu of such taking or in avoidance of such

taking, the condominium ownership pursuant to this Declaration shall not terminate. Each Owner (and Mortgagee holding an interest in such Owner's Unit) shall be entitled to a share of the Condemnation Award to be determined under the following provisions. The Condemnation Award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. As soon as practical, the Association shall reasonably and in good faith allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, as follows:

18.3.1. The total amount allocated to taking of or injury to the Common Elements shall be apportioned among Owners and their Mortgagees on the basis of each Owner's undivided interest in the Common Elements;

18.3.2. The total amount allocated to severance damages, if any, shall be apportioned to the Owners and Mortgagees of those Condominium Units which were not taken or condemned;

18.3.3. The respective amounts allocated to the taking or injury to a particular Condominium Unit or to improvements an Owner has made within his own Condominium Unit shall be apportioned to the Owner and Mortgagees of that particular Condominium Unit involved; and

18.3.4. The total amount allocated to consequential damages and any other taking or injuries shall be apportioned as the Association determines to be equitable under the circumstances.

If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall use such allocation. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective First Mortgagees.

SECTION 18.4. Reorganization. If a partial taking results in the taking of Individual Air Space Units, the Owners of such Units shall automatically cease to be members of the Association, and their ownership interests in the Common Elements shall terminate and vest in the Owners of the remaining Condominium Units. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception (including any extension), and shall submit such reallocation to the Owners and the First Mortgagees of the remaining Individual Air Space Units for the amendment of this Declaration.

SECTION 18.5. Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in Article XVI of this Declaration.

SECTION 18.6. Notice of Condemnation to First Mortgagees. If any portion of the Condominium Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

SECTION 18.7. Consent of Eligible Mortgage Holders. Without the consent of 51% of the Eligible Mortgage Holders (based on one vote for each Unit subject to a Mortgage held by an Eligible Mortgage Holder) the following actions shall not be taken:

18.7.1. Any restoration or repair of the Condominium Project after a partial condemnation which is not substantially in accordance with the Declaration and the Map;

18.7.2. Any election to terminate the legal status of the Condominium Project after a substantial taking and condemnation of the Condominium Project; and

18.7.3. Reallocation of interests in the Common Elements resulting from a partial condemnation.

## ARTICLE XIX

### DECLARANT'S RIGHTS REGARDING EXPANSION AND WITHDRAWAL

SECTION 19.1. Reservation of Right to Expand. Amplifying the provisions of Section 1.3 of this Declaration, Declarant (which term shall include all successors and assigns of Declarant) reserves the right for five years from the date the first Condominium Unit is sold to an Owner to expand this Condominium Project to include additional Condominium Buildings and some or all of the real property described on Exhibit B. Such expansion shall include up to 16 additional Buildings containing up to 32 additional Condominium Units on the property described in Exhibit B. All such Units shall be comparable in quality of construction to those Units described in this Declaration, and generally be compatible in design and appearance to those Units described in this Declaration. Until expansion becomes effective under Section 19.2, Declarant shall pay all taxes and other assessments with respect to the expansion property.

SECTION 19.2. Supplemental Declarations and Supplemental Condominium Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder for Huerfano County, Colorado, no later

than five years from the date of the recording of this Declaration, a supplement or supplements to this Declaration containing a legal description of the site or sites for a new Building or Buildings, the changed percentage interests of the Owners, and the real property to be submitted to the Declaration, together with a Supplemental Condominium Map or Maps containing the same information with respect to the new Buildings as was required on the original Condominium Maps with respect to the initial Buildings. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion. All intended improvements located on land to be annexed to the Property as part of the Condominium Project must be substantially completed before expansion. The effective date of such expansion shall be the later of the dates of recordation of the Supplemental Declaration and Supplemental Condominium Map, and such date shall be used for the purpose of determining when the definitions shall be expanded pursuant to Section 19.3 below, and the fractional undivided interests in the Common Elements shall change, as provided in Section 19.5 below.

SECTION 19.3. Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Condominium Project as so expanded. For example, "Condominium Unit" shall mean the Condominium Units described in this Declaration plus any additional Condominium Units added by a Supplemental Condominium Declaration or Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Condominium Units shall be effective to transfer rights in the Condominium Project as expanded, by use of the form of description set forth in Article XI above, with additional references to the Supplemental Condominium Declaration(s) and the Supplemental Condominium Map(s). The recordation in the records of Huerfano County, Colorado, of a Supplemental Condominium Map or Maps incident to any expansion shall operate automatically to grant, transfer, and convey to the Owners of Condominium Units as they existed before such expansion the respective undivided interests, set forth in the Supplemental Declaration accomplishing such expansion, in the new Common Elements added to the Condominium Project as the result of such expansion and to convey from such Owners of Condominium Units as they existed before such expansion a portion of the Common Elements of the Condominium Project as previously constituted, so that each Unit Owner shall own that percentage of the Common Elements in the expanded Condominium Project as provided in Section 19.5 below and as set forth in the Supplemental Declaration accomplishing such expansion. Such recordation shall also operate to vest in any then Mortgagee of any Condominium Unit in the Condominium Project as it existed before such an expansion a security interest in the undivided interest so acquired by the Owner of the Condominium Unit encumbering the new Common Elements added to the Condominium Project as the result of such expansion.

SECTION 19.4. Declaration Operative on New Buildings.

The new Buildings shall be subject to all of the terms and conditions of this Declaration and of a Supplemental Declaration or Declarations, and the Condominium Units therein shall be subject to the condominium regime with all the incidents pertaining thereto as specified herein, upon placing the Supplemental Condominium Map(s) and Supplemental Condominium Declaration(s) of public record in the real estate records of Huerfano County, Colorado.

SECTION 19.5. Fractional Undivided Interests in Common Elements; Disposition of Remainder of Common Elements.

Each Owner's undivided interest in the Common Elements of the Condominium Project, as expanded from time to time, shall be expressed as a fraction, the numerator of which shall be the number of square feet within the Unit owned by the Owner and the denominator of which shall be the total number of square feet within all completed Condominium Units of the Condominium Project and such fraction may be expressed as a percentage. At the time or times that the Declarant records any Supplemental Declaration, the undivided interests of the Owners of each Condominium Unit in the Common Elements as of that time shall be attached as an exhibit to such supplemental Declaration.

SECTION 19.6. Assessments. Each Owner shall be liable for Common Expenses and for annual assessments, special assessments, and default assessments as provided in Article VIII of this Declaration in the proportions as set forth in an exhibit to such Supplemental Declaration. Owners of Condominium Units in any expansion portion of the Condominium Project shall become liable for assessments upon their purchase of these Units. Declarant or its successor with respect to such annexed property, as the case may be, shall be liable for assessments with respect to Condominium Units in any expansion portion of the Project from the date of annexation until individual Condominium Units are sold.

SECTION 19.7. Easement Across Common Elements and Easement of Enjoyment.

The Owners of each Condominium Unit now or hereafter included in the Condominium Project shall have a perpetual easement and right-of-way for access to such Condominium Unit over, upon, and across the Common Elements in the expanded Condominium Project and an easement of enjoyment of any recreation facilities, if any, hereafter included as a part of the Condominium Project as provided in and subject to the terms of Article V and Article XIV of this Declaration.

SECTION 19.8. Construction of Additional Condominium Units. Declarant reserves for itself and its successors and assigns the right for 20 years from the date the first Condominium Unit is sold to an Owner to construct up to eight additional buildings containing up to 16 additional Condominium Units on the Property in the approximate locations indicated on the Condominium Map recorded contemporaneously with this Declaration. All such additional Units shall be comparable in

quality of construction to those Units described in this Declaration and which are shown on the Condominium Map recorded contemporaneously with this Declaration, and generally be compatible in design and appearance to such Units. Declarant shall not commence construction of any such additional Units without notice to the Association. Any construction shall be only in compliance with a valid building permit and in accordance with all applicable governmental requirements. Prior to commencement of construction of such additional Units, and during the term of such construction until a supplemental condominium declaration is recorded adding such additional Units to the regime created by this Condominium Declaration, Declarant shall provide adequate hazard and liability insurance with respect to all such Units. Any such policy of liability insurance shall name the Association as an additional insured. Declarant shall indemnify and hold the Association and all Owners harmless from all costs or liability of any kind, including all attorneys' fees, in connection with the construction of any additional Units as part of the Project. During the period of construction of any such additional Unit, such additional Unit will not be deemed to be a Condominium Unit for the purposes of this Condominium Declaration, but shall be deemed to be a separate real property interest and estate located on the Property and subject to the covenants and restrictions created in this Declaration. Such interests shall be subject to the lien in favor of the Association for unpaid assessments and other charges contemplated by Section 8.9. Upon or prior to the sale of any such additional Unit, Declarant shall record a supplement declaration and supplemental condominium map as contemplated by Section 19.2 and thereupon the provisions of Sections 19.3 through 19.7 shall apply with respect to such newly created Units.

SECTION 19.9. Withdrawal. Declarant hereby reserves the right for itself and its successors and assigns during the 20 years following the recording of this Condominium Declaration to withdraw from the regime created by this Declaration and the Condominium Map all or part of those portions of the Property designated Area A and Area B on the map attached hereto as Exhibit D. Declarant hereby reserves in connection with the grant of this Declaration, for itself and its successors and assigns, the permanent, non-exclusive easement for parking and for vehicular and pedestrian ingress and egress over and across those portions of the Property from time to time designated or intended for use as drives or parking areas to provide vehicular and pedestrian access to Areas A and B. Any withdrawal of property from the provisions of this Declaration and the Condominium Map shall be accomplished by the Declarant recording for record in the office of the Clerk and Recorder of Huerfano County, Colorado, a Declaration of Withdrawal and an amended plat or map showing the area or areas being withdrawn from this Declaration. No such withdrawal will be effective unless accomplished in accordance with applicable county subdivision regulations and requirements. Upon such withdrawal the provisions of Section 19.3 shall apply. At no time shall the Declarant withdraw from this Declaration any Condominium Units

nor shall the Declarant withdraw any property required for access to or convenient use of Condominium Units. Upon any such withdrawal, the Declarant will grant to the Association or the Owners all utility and other easements necessary for the service and enjoyment of the Condominium Units.

SECTION 19.10. Partition. Notwithstanding any other provision of this Declaration, at any time during the 20 year period commencing with the recording of this Declaration, Declarant and any successors and assigns of Declarant with respect to the Development Rights may commence an action for petition in accordance with Colorado Statutes and this Section. Declarant and each Owner agree that the relief granted in such action for partition shall be to sever from the Property and convey to Declarant and its successors and assigns the land associated with the proposed building sites for additional Units as shown on the Condominium Map recorded contemporaneously with this Agreement along with such utility, access, and other easements as may be necessary or convenient to the use and enjoyment of such partitioned property, reserving to the Association and the Owners such rights and easements as may be necessary for the use and enjoyment of the Condominium Units created by this Declaration. The Court in any such partition action shall, in its discretion, provide that all attorney's fees incurred by any party on account of any party wrongfully requesting or objecting to the partition will be borne by such requesting or objecting party; otherwise all parties shall bear their own attorney's fees and court costs.

SECTION 19.11. No Duty to Construct. Notwithstanding anything contained in this Article XIX, the Declarant and its successors and assigns are under no duty to construct any additional improvements on the Property or on the expansion property described in Exhibit B. At any time, Declarant, or its successors and assigns with respect to the Development Rights may, by notification to the Association and recording a document stating such intention, waive its rights with respect to all or any of its Development Rights, whereupon the Declarant's obligation to pay assessments with respect to such Development Rights will terminate.

## ARTICLE XX

### REVOCATION OR AMENDMENT OF DECLARATION

SECTION 20.1. Revocation. This Declaration shall not be revoked unless the Owners representing an aggregate interest of 67% or more (other than Declarant) and 67% of all the holders of any recorded First Mortgage covering or affecting all of the Condominium Units (based on one vote per First Mortgage held) consent and agree to such revocation by instrument(s) duly recorded.



SECTION 20.2. Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, at any time and from time to time, by an instrument (which instrument may be executed in identical counterparts, in which event all of such counterparts shall be taken as one and the same instrument of amendment), approved as follows:

20.2.1. If Declarant has not conveyed all Condominium Units to the individual Owners or leased or rented to the lessees or renters within five years from the date of this Declaration, then any amendment to or termination of this Declaration will require the prior written approval of the Declarant and other Owners representing an aggregate interest of 67% or more of all the Condominium Project that has been conveyed, and 67% of the Eligible Mortgage Holders (based on one vote for each Unit encumbered by an Eligible Mortgage Holder). Notwithstanding the foregoing, Declarant may make any changes reasonably necessary to satisfy the requirements of the Federal National Mortgage Association, the Veterans' Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, or any other federal agency, without obtaining the prior written approval or consent of other Owners or any Eligible Mortgage Holders.

20.2.2. Following the sale to the individual Owners or lease to the lessees of all Condominium Units, then any amendment to or termination of this Declaration will require the prior written approval of the individual Owners owning not less than 67% of the aggregate ownership interests of the Condominium Units and of 67% of the Eligible Mortgage Holders (based upon one vote for each Unit encumbered by an Eligible Mortgage Holder). Provided, however, any such action (a) terminating this Declaration in full or terminating the condominium regime established hereby, (b) changing the Owners' undivided interests in the Common Elements as shown in Exhibit C attached hereto except as provided in Article XIX of this Declaration; (c) partitioning or subdividing any Unit; (d) seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; or (e) using hazard insurance proceeds for losses to any Condominium Property (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of such Condominium Property shall require the prior written approval of 67 percent of all First Mortgagees (based upon one vote for each First Mortgage owned), and further provided that, for a period of five years from the date of recording of this Declaration, Sections 4.3, 14.4, 14.5, 14.9 and 14.11 and Article XIX cannot be amended or terminated in whole or in part without the prior written approval of the Declarant.

SECTION 20.3. Recording of Amendments. To be effective, all amendments to or termination of this Declaration must be recorded in the office of the Clerk and Recorder of Huerfano County, Colorado, and must contain evidence of approval of such amendments or termination showing the acknowledged and notarized signatures of all the necessary approving parties.

FEDERAL AGENCY APPROVAL REQUIREMENTS

SECTION 21.1. FHLMC Approval Requirements. Unless at least 67% of the First Mortgagees (based on one billed for each first mortgage owned) and Owners (other than Declarant) holding at least 67% of the votes in the Association have given their written approval, the Association shall not be entitled to:

21.1.1. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common Elements (the granting of easements for public utilities or for other public consistent with the intended use of such common elements shall not be deemed a transfer within the meaning of this clause);

21.1.2. Change the method of determining the obligation, assessments, dues, or other charges which may be levied against an Owner;

21.1.3. By act or omission change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of improvements on Condominium Units, the exterior maintenance of improvements on Condominium Units, the maintenance of the Common Elements and driveways, or the upkeep of lawns and plantings in the Condominium project;

21.1.4. Fail to maintain fire and extended coverage on insurable common property in an amount not less than one hundred percent of current replacement costs; or

21.1.5. Use hazard insurance proceeds for losses to common property for other than the repair, replacement or reconstruction of such common property.

SECTION 21.2. FHA-VA Approval. If the Condominium Project receives the approval of either the Federal Housing Administration or the Veterans Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration as applicable: annexation of additional properties except as provided in Article XIX of this Declaration; merger, consolidation, or dissolution of the Association; dedication or conveyance of Common Elements; or amendment of this Declaration or the Articles of Incorporation. No right of first refusal or similar restrictions on the right of any Owner to sell, transfer, or otherwise convey a Condominium Unit is permitted.

MISCELLANEOUS

SECTION 22.1. Period of Condominium Ownership. The condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration is terminated in the manner provided herein.

SECTION 22.2. Supplement to Condominium Ownership Act. The provisions of this Declaration shall be in addition to and supplemental to the Condominium Ownership Act of the State of Colorado, as it may be amended from time to time, and to all other provisions of law.

SECTION 22.3. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations promulgated thereunder, shall be through any proceedings at law or in equity brought by any aggrieved Owner, the Association, or the Declarant against the Association or any Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

SECTION 22.4. Non-Waiver. Failure by the Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

SECTION 22.5. Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect. Any provision hereof which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

SECTION 22.6. Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

SECTION 22.7. Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define,

limit, or otherwise describe the scope of this Declaration nor the intent of any provision hereof.

SECTION 22.8. Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation of the Association and the Bylaws of the Association, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation of the Association and the Bylaws of the Association, the Articles of Incorporation of the Association shall control.

SECTION 22.9. Cessation of Declarant. Declarant shall cease to be the Declarant upon the earlier of five years from the date of this Declaration or upon the recording of a notice to that effect.

SECTION 22.10. Notice. Upon the written request to the Association of any insurer, Mortgagee, or Guarantor, such person or entity will be entitled to notice as described in Sections 8.15, 10.6.10, 16.6, 18.6, 20.1, and 20.2 whether or not such section requires notice to such party.

IN WITNESS WHEREOF, Declarant in such capacity and as the present Owner of the Condominium Property has executed this Declaration on the date stated in the following acknowledgment.

FIRSTSOUTH, F.A., a federally  
chartered savings and loan  
association

By: William J. Xenot  
Title: Vice President

Attest:

Billie Lee Meeks  
Assistant Secretary

STATE OF Oklahoma )  
COUNTY OF Jefferson ) SS.

The foregoing instrument was acknowledged before me this 31st day of July, 1986, by William A. Roberts as vice president and William A. Roberts as assistant secretary of FIRSTSOUTH, F.A., a federally chartered savings and loan association.

WITNESS my hand and official seal.

My commission expires 6-19-89.

Garland C. Cross  
Notary Public

[SEAL]

LEGAL DESCRIPTION OF THE PROPERTY

TRACT 1, PANADERO DEVELOPMENT FILING NO. 2,  
COUNTY OF HUERFANO, STATE OF COLORADO

EXHIBIT B  
EXPANSION PROPERTY

TRACT 2, PANADERO DEVELOPMENT FILING NO. 2,  
COUNTY OF HUERFANO, STATE OF COLORADO

EXHIBIT COWNERS' INTERESTS IN COMMON ELEMENTS AS OF  
RECORDATION OF DECLARATION

<u>Unit</u>	<u>Percentage Ownership</u>
	16.67%
	16.67
	16.67
	16.67
	16.67
	<u>16.67</u>
Total	<u>100.00%</u>



# THE ASPENS AT PANADERO CONDOMINIUMS

## PHASE II

PANADERO DEVELOPMENT FILING No. 2

### A Condominium Map

