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AMENDED DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS OF  
SUNWATCHER CONDOMINIUMS

**INDEXED**

THIS CONDOMINIUM DECLARATION Made this \_\_\_\_\_ day of July, 1983, by Moyer-Jackson-Phipps, A partnership organized under the laws of the State of Colorado, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of the following described real property situated in the County of Huerfano, State of Colorado:

Tract 4 of Panadero Development Filing No. 2, according to the recorded plat thereof, otherwise known as Sunwatcher Condominiums.

WHEREAS, Declarant desires to establish a Condominium Project on the Property under the Condominium Ownership Act of the State of Colorado; and

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of the Property subject to the easements, restrictions and reservations of record and as set forth on the Condominium Map hereinafter described, and as set forth in this Declaration.

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land encompassing the Property and shall be a burden and a benefit to Declarant, its grantees, successors and assigns, and any person acquiring or owning an interest in the real property and improvements thereon which is subject to this Declaration, their grantees, successors, heirs, personal representatives, devisees and assigns.

ARTICLE I

DEFINITIONS

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

1.01 "Articles" means the Articles of Incorporation of the Association.

1.02 "Association" means the Sunwatcher Condominium Association, a Colorado non-profit corporation, its successors and assigns, the Articles and Bylaws of which, along with this

Declaration, shall govern the administration of the Project, and the members of which shall be all of the Owners.

1.03 "Board of Directors" or "Board" means the governing body of the Association.

1.04 "Building" means one or more of the building improvements erected within the Project.

1.05 "Bylaws" means the Bylaws of the Association.

1.06 "Common Expenses" means and includes all sums lawfully assessed against the Owners by the Board, including without limitation the expenses of administration, maintenance, repair or replacement of the General Common Elements, the expenses declared to be Common Expenses by provisions of this Declaration and the Bylaws, and expenses agreed upon as Common Expenses by a vote of the Owners representing an aggregate interest of at least 51% of the General Common Elements.

1.07 "Condominium Unit" means the fee simple interest in and title in and to a Unit, together with the undivided fee simple interest in the General Common Elements, appurtenant to such Unit, the appurtenant Limited Common Elements, and all other rights and burdens created by this Declaration. The term "Condominium Site" shall be synonymous with the term "Condominium Unit".

1.08 "Declarant" means the Declarant named herein and such successor or successors as may be designated hereafter by Declarant by written notice duly recorded, it being specifically intended that 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 separately or with one or more of such rights or interests, to any Person, including without limitation, the Association (provided that no Owner shall be deemed a successor transferee, or assignee of any right or interest of Declarant reserved or contained in this Declaration by virtue of a deed conveying a Condominium Unit unless said right or interest is specifically and expressly assigned therein).

1.09 "Declaration" means this Declaration together with any supplement or amendment hereto recorded in the Office of the Clerk and Recorder of Huerfano County, Colorado.

1.10 "General Common Elements" means all of the Project except the portions thereof which constitute Units, and also means all parts of a Building or any facilities, improvements and fixtures which may be within a Unit which area may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair, or safety of a Building or any part thereof or any other Unit therein. The term "Common Property" shall be synonymous with "General Common Elements".

Without limiting the generality of the foregoing, the following shall constitute General Common Elements:

(a) All of the land and easements which are part of the Property, including all roads and roadways which are located on the Property;

(b) All foundations, columns, girders, beams, and supports of a Building;

(c) All storage areas not located within a Building and all parking spaces (subject to specific designation for individual Owner use as Limited Common Elements as hereinafter provided);

(d) The exterior walls of a Building, the main or bearing walls within a Building (but specifically excluding all non-bearing walls therein), the main or bearing sub-flooring and the roofs of a building;

(e) The mechanical installations of a Building consisting of the equipment and materials making up any central services such as power, light, water, sewer, and heating which exist for common uses, including the pipes, vents, ducts, conduits, wires, telephone wire and other similar utility installations used in connection therewith; and

(f) All other parts of the Project necessary in common use or convenient to its existence, maintenance or safety.

1.11 "Guest" means any agent, employee, tenant, guest, licensee or invitee of an Owner.

1.12 "Limited Common Elements" means those General Common Elements which are reserved for the use of certain Owners to the exclusion of the others, including but not limited to the spaces of air which may exist between the non-bearing perimeter walls of adjacent Units.

1.13 "Map" or "Condominium Map" means the Condominium Map for Sunwatcher Condominiums recorded in the records of the office of the Clerk and Recorder of Huerfano County, Colorado. More than one such Map or Condominium Map or supplements thereto may be recorded, and either term shall include the original as well as all supplemental Maps or Condominium Maps.

1.14 "Mortgage" means any Mortgage, Deed of Trust, or other contract or security interest recorded in the records of the office of the Clerk and Recorder of Huerfano County, Colorado, and by which a Condominium Unit or any part thereof is encumbered. "First Mortgage" means the unpaid and outstanding Mortgage having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens or special assessments).

1.15 "Mortgagee" means the holder of a Mortgage. "First Mortgagee" means the holder of a First Mortgage.

1.16 "Owner" means the Person or Persons owning a Condominium Unit in fee simple, including the Declarant so long as any Condominium Unit is owned by the Declarant.

1.17 "Person" means an individual, corporation, partnership, association, trustee, or any other legal entity.

1.18 "Project" means all of the Property, Condominium Units, Buildings, and improvements submitted to this Declaration.

1.19 "Property" means the real property known as the Sunwatcher Condominiums, as described on the final plat thereof filed in the office of the Huerfano County, Colorado Clerk and Recorder, together with all improvements presently existing or hereafter constructed thereon. Its legal description is Tract 4 of Panadero Development, Filing No. 2, Huerfano County, Colorado.

1.20 "Unit" means an individual air space which is contained in all or part of a floor in a Building. Each Unit is shown on the Map and is identified thereon with a number. The exact boundaries of a Unit are the interior unfinished surfaces of such walls, floors and ceilings which mark the perimeter boundaries thereof and where found along such walls, the windows and doors in their closed position. Provided, however, and notwithstanding the foregoing, each Building may be constructed so that any interior wall of a Unit which separates the same from the adjacent Unit may be a non-bearing wall which may itself be separated from the non-bearing wall of the adjacent Unit by a space of air of a specific width designated on the Map, and in said event the exact boundary of a Unit along said non-bearing wall shall not be the interior unfinished surface of said non-bearing wall but shall instead be the surface of said non-bearing wall which borders the aforesaid space of air, and said space of air between the surfaces of the non-bearing walls of adjacent Units shall be a Limited Common Element. A Unit also includes all fixtures and improvements therein contained but not any General Common Elements which may be within a Unit.

## ARTICLE II

### CONDOMINIUM MAP

1. The Declarant shall cause the Condominium Map to be filed in the records of the office of the Clerk and Recorder of Huerfano County, Colorado, prior to conveyance of the first Condominium Unit. The Map shall depict the legal description of the Property and a survey thereof, the name of the Project, the linear measurements and location, with reference to the exterior boundaries of the land, of the Buildings and all improvements built on said land, the floor plan and elevation plan of the Buildings showing the location, the designation and the linear dimensions of each Unit, together with a designation of certain of the Common Elements, and the linear measurements showing the thickness of the perimeter and common walls of the Building and

the width of the spaces of air between the non-bearing walls of adjacent Units. The Map and any supplement thereto shall contain the statement of the Declarant, submitting the property to the provisions of this Declaration, and the statement of an engineer or a registered land surveyor certifying that the Map fully and accurately depicts the layout, measurements, and location of all of the Buildings and improvements, the Unit designations, and the dimensions of such Units.

2. Declarant hereby reserves unto itself and the Board, the right, from time to time, without the consent of any Owner being required, to amend the Map and supplements thereto, for the purpose of conforming the same to the actual location of any of the constructed improvements, to establish, vacate and relocate utility easements, access road easements, and parking spaces.

3. It is understood that the forty (40) Condominium Units shall be located in ten separate Buildings, to be constructed at different times upon the Property, and the Condominium Maps for each Building shall therefore be recorded with the Huerfano County Clerk and Recorder at different times, consistent with construction of each Building. Declarant has the right and authority to create, execute and record Condominium Maps, including Condominium Maps recorded subsequent to the recording of the first Condominium Map. The concurrence, by written indication on the Condominium Maps or otherwise, of any and all persons or entities having an interest, recorded or otherwise, in any Units designated on prior recorded Condominium Maps, shall not be required for the preparation, completion, execution and recording of subsequent Condominium Maps, and each and every person or entity having an interest in the Units are deemed to have consented to the preparation, completion, execution and recording of Condominium Maps, which may be recorded subsequent to the date of their respective interests in the Units or the Property, as contemplated by these Declarations. The approximate location of Buildings yet to be constructed may be indicated on Condominium Maps. Deviations in location shall be allowed, as required by and indicated by subsequent final Condominium Maps for such Buildings, without the concurrence or signatures on Condominium Maps of persons or entities having a prior interest in any Units, and the provisions of this paragraph pertaining to deemed consent apply likewise to this circumstance.

4. In interpreting any and all provisions of this Declaration or the Bylaws, subsequent to deeds to and/or Mortgages of Condominium Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered, notwithstanding any deviation from the location of such Unit indicated on the Map.

#### ARTICLE III

#### DIVISION OF PROPERTY INTO CONDOMINIUM UNITS

1. Declarant does hereby submit the Project to Condominium Ownership pursuant to the Colorado Condominium Ownership Act and the Project is hereby divided into forty Condominium Units, each consisting of a separate fee simple estate in a particular Unit, and an appurtenant undivided fee simple interest in the General Common Elements. The General Common Elements shall be held in common by the Owners. Each Owner of a Condominium Unit shall own a 2.5% undivided interest in the General Common Elements.

2. Declarant hereby reserves the right to physically combine the area or space of one Unit with the area or space of one or more adjoining Units, provided that Declarant shall not exercise said right without the prior written consent of the First Mortgagee(s) having an interest in said Units. In the event of any such physical combining of Units to create a combined Unit (hereinafter referred to as a "Combined Unit"), such Combined Unit shall also include the combining of the fixtures and improvements therein, the undivided interest in General Common Elements appurtenant to the Units so combined, the votes in the Association, the Limited Common Elements appurtenant to the Units so combined and the liability for Common Expenses. Declarant hereby reserves the right to designate and convey to any purchaser of any such Combined Unit the space of air existing between the non-bearing perimeter walls situated within the Combined Unit, and said space of air shall no longer be considered to be a Limited Common Element; provided, however, that said space of air shall automatically become a Limited Common Element and shall no longer be part of a Unit in the event the Combined Unit subsequently becomes subject to separate ownership in the future in the manner as originally designated on the initial Map. This reserved right in Declarant shall terminate upon the conveyance by Declarant of all of the Condominium Units within the Project. Any Owner of adjacent Units shall have the right to create a Combined Unit therefrom in the same manner as the Declarant may, do so as provided in this paragraph, and shall cause an amendment to be made to the Declaration and to the Map in the same manner as set forth in paragraph 3 of this Article, for subdividing a Combined Unit, which amendment shall be at the sole expense of said Owner.

3. In the event that a purchaser purchases a Combined Unit as described in paragraph 2 of this Article, then said Owner shall have the right to subdivide the Combined Unit into two or more Units, but in no event shall said act of subdividing create more Units than the number of Units combined to form the Combined Unit. Subject to applicable provisions of law, upon application of an Owner to subdivide such a Unit, the Association shall prepare, execute and record an amendment to the Declaration and to the Map for the purpose of evidencing the subdivision of the Unit, provided that all reasonable expenses incurred by the Association in complying with the provisions hereof shall be the sole expense of the Owner requesting the subdivision. The amendment to the Declaration must be executed by the Board and by the Owner of the Combined Unit to be subdivided, and said

amendment must assign an identifying number to each Unit created and reallocate the General Common Element interest, votes in the Association, appurtenant Limited Common Elements and liability for Common Expenses formerly allocated to the Combined Unit to the new Units in any reasonable manner prescribed by the Owner of the Combined Unit. No such act of subdividing shall be exercised without the prior written consent of the First Mortgagee(s) having an interest in the Combined Unit.

#### ARTICLE IV

##### LIMITED COMMON ELEMENTS

Subject to the definition thereof, the Limited Common Elements shall be identified herein and designated herein or in a Deed from the Declarant as appurtenant to a particular Condominium Unit. Any space of air between the non-bearing perimeter walls of adjacent Units (which shall be deemed to be Limited Common Elements appurtenant to the two Units immediately adjacent on either side of said space of air) and any other designated Limited Common Element shall, without further reference thereto, be used in connection with the Unit or Units to which it is appurtenant to the exclusion of the use thereof by the other Owners, except by invitation. No reference as to whether such Limited Common Elements are exclusive or non-exclusive need be made in any deed, instrument, conveyance or any other instrument.

#### ARTICLE V

##### INSEPARABILITY OF A CONDOMINIUM UNIT

1. No part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration. Each Unit and the undivided interest in the General Common Elements and the limited Common Elements appurtenant thereto shall comprise one Condominium Unit and 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 thereof 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, even though any particular portion of or interest in any Condominium Unit is not expressly mentioned or described in the subject document.

2. The General Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any action for partition or division of the General Common Elements. By acceptance of his deed or other

instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived his right to institute and/or maintain a partition action or any other cause of action designed to cause a division of the General Common Elements, and this paragraph 2 may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain such an 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.

## ARTICLE VI

### DESCRIPTION OF CONDOMINIUM UNIT

Every deed, lease, mortgage, will or other instrument shall legally describe a Condominium Unit by its identifying Condominium Unit Number (and building designation, if appropriate) followed by the words "Sunwatcher Condominiums in accordance with and subject to the original Declaration of Covenants, Conditions and Restrictions of the Sunwatcher Condominiums recorded on August 4, 1982, in Book 364 at Page 339 (Reception No. 287701), and Map recorded in the records of the County Clerk and Recorder of the County of Huerfano, State of Colorado." Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, lease or otherwise affect not only the Unit, but also the General Common Elements and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress throughout and for use of the General Common Elements which are not Limited Common Elements, the right to the exclusive use of the appurtenant Limited Common Elements as described herein and/or on the Condominium Map, and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration. The undivided fee simple interest in the General Common Elements appurtenant to any Condominium Unit shall be deemed conveyed or encumbered with that Condominium Unit, even though the legal description in the instrument conveying or encumbering said Condominium Unit may only refer to the title to that Condominium Unit. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration, without specific reference thereto.

## ARTICLE VII

### SEPARATE ASSESSMENT AND TAXATION

Each Condominium Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Neither the Buildings, the Property nor any use of the General Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Condominium Unit



shall be confined to that Condominium Unit. In the event that such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his ownership interest in the General Common Elements, and in said event, such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.

#### ARTICLE VIII

##### TITLE TO A CONDOMINIUM UNIT

A Condominium Unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

#### ARTICLE IX

##### USE AND OCCUPANCY DURING CONSTRUCTION AND SALES PERIOD

Notwithstanding any provision to the contrary contained in the Declaration, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of any construction and/or sale of the Condominium Units in the Project, upon such portion of the Project as Declarant may choose, such facilities as in the sole discretion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Condominium Units, including without limitation, a business office, storage area, construction yards, signs, model units, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Condominium Units. In addition, Declarant, its agents, employees and contractors shall have the right to ingress and egress over the General Common Elements as in Declarant's sole discretion may be necessary with regard to the foregoing. Further, Declarant, its agents, employees and contractors shall have the right to ingress and egress in and through all Units during the period of the construction and/or sale of the Condominium Units for the purpose of any required or desired refurbishment, construction, maintenance, or repair to such Units or to the Building, or any part thereof.

#### ARTICLE X

##### VARIOUS RIGHTS, OBLIGATIONS AND EASEMENTS

1. Subject to the other provisions of this Declaration, each Owner and the Owner's Guests shall have an exclusive right

to use and enjoy the Limited Common Elements designated herein, in the Map or in the initial deed from Declarant as appurtenant to the Condominium Unit owned by such Owner.

2. The Association and the Board shall have a non-exclusive right and easement to make such use of and to enter into or upon the general Common Elements, the Limited Common Elements and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration.

3. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used solely for purposes permitted under applicable zoning laws and governmental regulations, but in any event, not for commercial purposes. Each Owner shall be solely responsible for complying with all governmental laws and regulations, including zoning laws, and shall hold harmless and indemnify the Association and all other Owners from and against any liabilities, claims or expenses which they may incur as a result of the Owner's failure to so comply, and the provisions of this indemnity and any other indemnity provided for in this Declaration may be enforced by the Association in the same manner as the Association may enforce the indemnity respecting mechanic's liens as set forth in paragraph 4 of Article XI hereof.

4. Each Owner may use the General Common Elements and his appurtenant Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Association and/or the Board may from time to time adopt rules and regulations governing the use of General and Limited Common Elements, but such rules and regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument of conveyance or assignment agrees to accept and be bound by any such adopted rules and regulations.

5. Each Owner shall have a non-exclusive easement for access between his Unit and the roads and streets adjacent to the Project and the driveways in the Project, and over and on the sidewalks and exterior access and other easements which are part of the General Common Elements. Each Owner shall have a non-exclusive easement in, on and over the General Common Elements, including the General Common Elements which may be within the Unit of another Owner, for utility service to the Owner's Unit, including but not limited to, water, sewer, gas, electricity, telephone and television service.

6. If any part of the General Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the General Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such

encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on a Condominium Unit for purposes of marketability of title to otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. In no event, however, shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner.

7. In the event that any of the General Common Elements are located within a Unit or may be conveniently accessible only through a particular Unit, the Association, the Board and each Owner shall have an easement, which may be exercised for any Owner by the Association or the Board, as his agent, for access through each Unit and to all General Common Elements, from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Unit. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the General Common Elements, or as a result of emergency repairs within another Unit, at the instance of the Association or the Board shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any damage to any portion of the Project or any expense incurred by the Association is a result of the willful or negligent act or lack of action of any Owner, then such Owner shall be solely responsible for the costs and expenses of repairing such damage, or otherwise incurred by the Association, and the Association may enforce such payment in the same manner as the Association may enforce an indemnity for mechanic's liens as set forth in paragraph 4 of Article XI hereof.

8. No Owner shall undertake any work in his Unit which would jeopardize the soundness or safety of the Project, reduce the value thereof or impair any easement thereon. Structural alterations shall not be made by an Owner to the exterior portions of his Unit or to the Buildings or in the water, gas or steampipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from the Buildings (except for the non-bearing perimeter walls of a Unit pursuant to the formation or subdivision of a Combined Unit as set forth in Article III and

except as may be agreed upon by Owners of adjacent Units pursuant to paragraph 9 of this Article), without the prior written approval of the Board first having been obtained, which approval may be withheld in the sole discretion of the Board. An Owner shall not be deemed to own lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to in this paragraph as "utilities") running through his Unit which serve one or more other Units, except as a tenant in common with the other Owners. All fixtures, appliances and equipment installed within a Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof.

9. Each Owner shall have the right to paint, tile, wax, paper, or otherwise decorate or redecorate the interior surfaces forming the boundaries of his Unit and shall have the right and duty to maintain and repair said interior surfaces and all walls, floors, ceilings, windows and doors within such boundaries. Each Owner shall have the right to remove, change the material of, and otherwise alter the non-bearing perimeter wall or walls which forms the Owner's boundary of his Unit lying adjacent to another Unit; provided, however, that the space of air situated between the non-bearing walls of adjacent Units shall remain as a space of air and free and clear of any and all improvements or obstructions, unless the prior written consent of the Owner of the adjacent Unit is obtained. In the event that the Owners of adjacent Units agree to construct any improvements or obstructions within said space of air (which is a Limited Common Element appurtenant to the two Units owned by said Owners), then said Owners may enter into such agreements, including party wall agreements, as the Owners may desire and said Owners may make such minor deviations in the description of their respective Unit boundaries and in the Limited Common Elements appurtenant to said adjoining Units as is necessary and desirable to effectuate the agreement of the Owners; provided, however, that: (a) no such change in the description of either Unit's boundaries or in the Limited Common Elements appurtenant thereto shall be permitted without the prior written consent of the First Mortgagees having an interest in either or both of said Units; (b) the respective ownership interests of each Unit in the General Common Elements shall not be altered; (c) The liability for Common Expenses allocated to each Unit shall not be altered; (d) The votes in the Association allocated to each Unit shall not be altered; and (e) neither the Association nor any other Owner shall be subjected to any additional liability or expense by reason of any such change in the description of the Unit boundaries or Limited Common Elements appurtenant thereto. Provided that all of the foregoing conditions are met, the Association and the effected Unit Owners shall cause to be prepared an amendment to this Declaration and to the Condominium Map in the manner prescribed in paragraph 3 of Article III hereof, which shall be done at the sole expense of the Owners requesting such amendment.

#### ARTICLE XI

## MECHANIC'S LIENS

1. No labor performed or materials furnished, with the consent or at the request of an Owner of a particular Condominium Unit, or his Guest, shall be the basis for the filing of a lien pursuant to law against the Condominium Unit or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Condominium Unit to the Board in the case of emergency repair. Labor performed or materials furnished for the General Common Elements, if duly authorized by the Board, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each of the Condominium Units in the Project.

2. In the event a lien is affected against two or more Condominium Units, the Owners of the separate Condominium Units may remove their Condominium Units from said lien by payment of the fractional or proportional amount attributable to each of the Condominium Units effected. In order to effect said release of the lien, an Owner shall pay an amount equal to a fraction of the amount of the lien claimed, including costs theretofore incurred to which a lien claimant is statutorily entitled, the numerator of which fraction shall be the Owner's interest in the General Common Elements Declaration so as to further the interest of Owners of Condominium Units in the project. It shall have all powers necessary or desirable to effectuate such purposes. Without limitation of the foregoing, the Association shall have the following duties, rights and powers:

- (a) To promulgate and from time to time supplement and amend reasonable rules and regulations governing the use of the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration.
- (b) To levy and make assessments for the following purposes:
  - (1) To promote the recreation, health, safety, best interests, and welfare of the Owners and residents of the Property;
  - (2) To provide for care and maintenance of the buildings, grounds, and improvements within, and other portions of, the Common Area, except for such buildings and improvements located within the Condominium Sites.
  - (3) To pay common utility expenses, if any;
  - (4) To pay the premiums for all insurance which

the Association is required or permitted to maintain;

(5) To pay wages for Association employees, Association management expenses, legal, accounting and other professional fees;

(6) To pay any deficit remaining from any previous assessment period;

(7) To create a reasonable contingency reserve, surplus or sinking fund;

(8) To lease or purchase real or personal property in the performance of its duties;

(9) To repair and replace the Association's facilities, machinery and equipment; and

(10) To pay any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration, its Articles Of Incorporation or By-laws.

- (c) In accordance with its Articles of Incorporation and By-laws, and upon the prior written approval of a majority of the Members, to borrow money for the purpose of improving or maintaining the Common Area.
- (d) To enter into or upon any Condominium Site in case of any emergency originating upon or threatening such Condominium Site. In case of an emergency, such right of entry shall be immediate and without the Owner's consent. An Owner, further, shall permit entry into his Condominium Site for the purpose of performing installations, alterations or repairs to the mechanical, electrical, or utility services, which, if not performed would affect the use of other Condominium Sites, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner.
- (e) To collect delinquent assessments by suit or otherwise and to enjoin or seek damages from the Owners for violation of any of the provisions contained in this Declaration or the Rules as promulgated hereunder.
- (f) To employ workmen, maids, janitors, gardeners and others; to contract for services to be performed including those of a Manager; to purchase supplies

and equipment, and to enter into contracts and generally to have the powers of a property manager in connection with the matters hereinabove set forth, except that the Association may not encumber or dispose of the interest of any Owner except to satisfy a lien or judgment against such Owner for violation of the Owner's covenants imposed by this Declaration.

- (g) To protect and defend the Project from loss and damage by suit or otherwise.
- (h) To employ advisors, attorneys, and auditors in connection with legal matters of the Association and audits of its books and records, which audits shall be available to Owners for inspection at the Association office.
- (i) To invest funds, if any, in the hands of the Board of Directors of the Association in excess of reasonable working capital needs, and to credit income derived therefrom to Owners in an equitable manner to offset Common Expenses and other costs described herein. Each Owner shall be furnished a statement of annual earnings attributable to Owners from such income received.
- (j) To file legal protests with authorities, when requested to do so by a majority of the Owners, against the granting by authorities of zoning variances as to any property adjoining or within a reasonable proximity of the Project which might affect or depreciate the value of the Owner's interest in the Project.
- (k) To designate and assign to Owners any available storage facilities contained within the Common Area for the exclusive use of such Owners. The exclusive right to make such designations and assignments is hereby reserved to the Association.
- (l) To exercise any right or privilege given it expressly by this Declaration or by law, and every other right, privilege, and power reasonably to be implied from the existence of any right or privilege given it herein or by its Articles of Incorporation or By-laws or reasonably necessary to effectuate its function and purposes.

3. Each Owner shall indemnify and hold each of the other Owners harmless from and against any liability or loss arising from the claim of any lien against the Condominium Unit of the Owner, or any part thereof, for labor performed or for materials furnished in work on such Owner's Condominium Unit.

4. 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 indemnity provided by the provisions of paragraph 3 of this Article 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 mechanic's lien, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the condominium Unit on which the labor was performed or materials furnished refused or fails to so indemnify within seven days after the Association shall have given notice to such Owner of the total amount, or any portion thereof from time to time, of the amount to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this paragraph 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 Article XVI hereof.

#### ARTICLE XII

#### COMPLIANCE WITH PROVISIONS OF DECLARATION, ARTICLES AND BYLAWS OF THE ASSOCIATION

Each Owner shall comply strictly with, and shall cause each of his Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws, and the decisions, rules, regulations and resolutions of the Association or the Board adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

#### ARTICLE XIII

#### THE ASSOCIATION

1. Declarant has caused the Association to be incorporated as a Colorado non-profit corporation. The Association, by its signature approving this instrument, has agreed to perform the duties required of it hereunder. For purposes of voting powers and membership in the Association, the Declarant shall be deemed to hold an interest in a Condominium Unit prior to construction of the building pertaining to such Condominium Unit.

2. The affairs of the Association shall be managed by a Board of Directors of not less than three nor more than eleven members, the specific number to be set forth from time to time in the Bylaws. Each Board member shall be an Owner or an officer, director, shareholder, partner or an employee of an Owner which



is a corporation, partnership, association, trustee, or any other legal entity. Regardless of the number of members of the Board, the terms of at least one-fourth of such Board shall expire annually, provided, however, that in the event the number of Board members is not evenly divisible by four then the Bylaws shall provide that there shall be a periodic turn-over of sufficient positions on the Board so that at the expiration of each four year period, the term of all Board members during that four year period shall have expired at least once. Notwithstanding anything to the contrary provided for herein, until Declarant has conveyed sixteen of the Condominium Units in the Project or until July 1, 1984, whichever event shall first occur, the members of the Board of Directors shall be appointed by the Declarant, its successors or assigns. Whenever in this Declaration it is provided that some action shall or may be taken by the Association, the same may be accomplished by the Board or by such officers, agents, or representatives of the Association who may be authorized to do so pursuant to the Articles or Bylaws.

3. The Owner or Owners of each Condominium Unit shall be entitled to one vote for each such Condominium Unit owned by said Owner or Owners, and there shall be a total of four votes for each Building comprising four Units. Notwithstanding the foregoing, in the event that one or more Units are combined by the Declarant to form a Combined Unit as defined in paragraph 2 of Article III, then the Owner or Owners of said Combined Unit shall be entitled to vote the total number of votes which would have been cast had the Units not been combined. In the event that any Owner of a Combined Unit subsequently subdivides the Unit into two or more Units pursuant to paragraph 3 of Article III, then the Owner subdividing the Combined Unit shall reallocate the number of votes among the divided Units in any reasonable manner, provided that the total number of votes to be cast by the Owner or Owners of all of the Units after the subdivision shall equal the number of votes which could have been cast by the Combined Unit.

4. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may be amplified by provision of the Articles and Bylaws of the Association, provided that in the event of any conflict between any provision of this Declaration and any provisions contained in the Bylaws and/or the Articles, the provision contained in this Declaration shall control.

5. The Owner of a Condominium Unit shall automatically become a member of the Association. Said membership is appurtenant to the Condominium Unit of said Owner and the ownership of the membership for a Condominium Unit shall automatically pass with fee simple title to the Condominium Unit. Each Owner shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his Condominium Unit. If the fee simple title to a Condominium Unit

is held by more than one Person, each Owner of a Condominium Unit shall be a member of the Association and shall be jointly and severally liable for all obligations to the Association respecting said Unit. Membership in the Association shall be limited to Owners of Condominium Units in the Project.

6. The Association is hereby granted all the powers necessary to govern, manage, maintain, repair, rebuild, administer, and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, and subject to express statements to the contrary in this Declaration, unless at least two-thirds of the First Mortgagees of Condominium Units (based upon one vote for each First Mortgage owned) and at least two-thirds of all of the Owners have given their prior written approval, the Association shall not be empowered or entitled to: (a) by act or omission, seek to abandon or terminate the Project; (b) change the pro rata interest or obligation of any individual Condominium Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of each Condominium Unit in the General Common Elements; (c) use hazard insurance proceeds for loss to the Project (whether Units or General Common Elements) for other than repair, replacement or reconstruction thereof; (d) partition or subdivide any Condominium Unit; and (e) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer (excluding the granting of easements for public utilities or other public purposes consistent with the intended use of the General Common Elements) any of the General or Limited Common Elements.

7. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the General Common Elements, except as is provided for in paragraph 9 of Article X hereof. Without limiting the generality of the foregoing, said obligation shall include the keeping of said General Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such General Common Elements which might impair access to the Project or the Units; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the General Common Elements. The Association shall be responsible for snow removal and maintenance of Roadways.

8. The Board may suspend any Owner's voting rights in the Association or during any period during which such Owner fails to comply with the Association's rules and regulations, or with any other obligations of such Owner under this Declaration, the Articles or Bylaws. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations herein or in the Articles or Bylaws contained or to obtain damages for non-compliance thereof, all to the fullest extent permitted by law. In any such action,

the Association shall be awarded its reasonable attorneys' fees incurred and interest on any sum due at the maximum rate of interest then permitted under the laws of the State of Colorado or at such other rate of interest as may be specified in this Declaration, in addition to any other relief granted thereunder. The Board may impose a fine, not to exceed \$100.00 per day, on any Owner for each violation or act of non-compliance by any such Owner or his Guest.

9. The Board of Directors may, from time to time, record a certificate of the identity and the mailing addresses of the persons then comprising the Board of Directors. Such certificate shall be conclusive evidence thereof in favor of any Person relying thereon in good faith regardless of the time lapsed since the date thereof.

10. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration or the Articles or Bylaws, or reasonably to be implied from the provisions of said documents, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

#### ARTICLE XIV

#### MORTGAGEE'S RIGHTS

1. The Association shall notify each First Mortgagee of any proposed material amendment of the Association's Articles or Bylaws at least ten (10) days prior to the effective date of such amendment or change, and shall give written notice to each First Mortgagee of the commencement of any condemnation or eminent domain proceeding not later than thirty (30) days after the commencement date thereof. Further, upon the written request of any First Mortgagee, the Association shall deliver to said First Mortgagee any of the following which are requested: Copies of budgets, notices of assessments, insurance certificates, or any other notices or statement provided under this Declaration by the Association to the Owner of the Unit encumbered by the Mortgage; any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners; copies of notices of meetings of the Owners (it being the intent hereof that each First Mortgagee shall have the right to be represented at any such meetings by a designated representative); notice of the decision of the Owners or the Association to make any material amendment to this Declaration, the Bylaws, or the Articles; notice of substantial damage to or destruction of any Unit, or any part of the General Common Elements; notice of any default of the First Mortgagee's Owner which is not cured by the Owner within thirty (30) days after the giving of notice by the Association to the Owner of the existence of the default.

2. The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees of the same Unit, the Association shall honor the most recent request received. Any Mortgagee may also make a written request that it be entitled to examine the books and records of the Association at any reasonable time, and the Association shall comply with said request.

3. Notwithstanding anything in this Declaration to the contrary, the undivided interest of an Owner in the General Common Elements shall not be decreased without the unanimous consent of all Owners and all First Mortgagees. Notwithstanding anything in this Declaration to the contrary, the prior written approval of all First Mortgagees shall be required to accomplish any of the following: (a) an amendment to the Declaration which changes the ratios of assessments against Owners or amends this Article, Article XXV, or any other provision in this Declaration which specifically grants rights to Mortgagees hereunder; (b) the alienation, release, transfer, hypothecation or other encumbrance of the General Common Elements, except that the consent of Mortgagees shall not be required for action by the Association to grant easements for utilities and similar or related purposes, or to lease or grant licenses; (c) the abandonment of this Project or the abandonment or removal of any or all of the Property from the provisions of this Declaration; (d) the use of hazard insurance proceeds for any purpose other than the repair, replacement, or reconstruction of any damaged improvements; (e) the effectuation of any decision by the Association not to maintain fire and extended coverage insurance on the Project as provided in this Declaration.

## ARTICLE XV

### ASSESSMENTS

1. Every Owner, except Declarant, by acceptance of the Deed or other instrument of transfer of his Condominium Unit, (and whether or not it shall be so expressed in such Deed or other instrument of transfer), is deemed to personally covenant and agree, jointly and severally, with every other Owner and with the Association, and hereby does so covenant and agree to pay to the Association the annual assessments applicable to his Condominium Units, 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 non-use of the General Common Elements or by abandonment or leasing of his Condominium Unit. The assessment

shall be made pro rata according to each Owner's interest in and to the General Common Elements.

2. The Board of Directors shall impose estimated annual assessments to meet the Common Expenses from and after the conveyance of the first Condominium Unit to such Condominium Unit's original Purchaser. Except as otherwise expressly provided in this Declaration, the Limited Common Elements shall be maintained as General Common Elements and Owners having the exclusive use thereof shall not be subject to any special charges or assessments. The assessments shall be made pro rata according to each Owner's interest in and to the General Common Elements, and said annual assessments shall be due and payable in monthly installments, in advance, on the first day of each month.

3. Declarant shall have no obligation to pay the estimated Common Expense assessment on Condominium Units owned by Declarant, imposed by the Board to meet the Common Expenses, but Declarant agrees to pay to the Association a sum equal to the difference between the monthly cost of operating and maintaining the General Common Elements, exclusive of reserves, and the amount of funds payable by the other Owners to the Association. This obligation of Declarant to subsidize the operations of the Association shall terminate when Declarant relinquishes his right to appoint the Association's Board or on July 1, 1984, whichever event first occurs. Subsequent to the occurrence of either of the aforesaid events, Declarant shall be obligated as any other Owner in reference to Condominium Unit then owned by Declarant to pay the estimated Common Expenses assessments imposed by the Board to meet the Common Expenses. The Board shall prepare and deliver or mail to each Owner an itemized annual budget showing the various estimated or actual expenses for which the assessments are made. Contributions for monthly installments of assessments shall be prorated if the Ownership of a Condominium Unit commences on a day other than the first day of the month. The assessments made for Common Expenses shall be based upon the requirement deemed to be such aggregate sum as the Board of Directors shall from time to time determine as to be paid or accrued to be paid to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements. Without limiting the generality of the foregoing, assessments made for Common Expenses may include, among other things, expenses of management; taxes and special assessments, until separately assessed; premiums for insurance of the types and kinds provided for in this Declaration; landscaping and care of grounds; common lighting; maintenance, repairs and renovations; trash collections, wages; water and sewer charges; legal and accounting fees; all utility charges that are master metered; and other costs and expenses relating to the General Common Elements. The Board may establish and segregate, out of such monthly assessments, a contingency or reserve fund for the repair, replacement and maintenance of those General Common Elements that must be replaced periodically. The omission or failure of the Board to fix the assessment for any

month shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay same.

4. Any Owner or First Mortgagee may inspect the Association's records or receipts and expenditures at any reasonable time during convenient weekday business hours upon reasonable notice to the Board. Upon payment of a reasonable fee not to exceed \$30.00, and upon ten (10) days notice to the Board, any Owner or First Mortgagee of such Owner shall be furnished a statement of accounts setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

5. The Board of Directors shall have the right during any calendar year to levy and assess against all of the Owners a special assessment for such purpose or purposes, in accordance with this Declaration, the Articles or Bylaws, as may be deemed necessary or desirable by the Association to comply with its responsibilities to the Project. Such special assessments shall be borne by the Owners (including the Declarant) in accordance with each Owners interest in the General Common Elements and shall be due and payable as determined by the Board of Directors, provided that no payment shall be due less than thirty (30) days after notice in writing of the amount of such special assessment for each Condominium Unit and of the time for payment thereof shall have been given to the Owners.

6. The Board of Directors may also levy a specific assessment against the Condominium Unit or the Owner thereof for any charges established pursuant to this Declaration, the Bylaws or the rules and regulations of the Association, including without limitation, costs incurred by the Association in making repairs to any portion of the Project which are caused by an Owner or his Guest, fines against an Owner as provided in this Declaration, and the amount necessary to satisfy any indemnity required to be paid by the Owner to or for the benefit of any other Owners or the Association as provided in this Declaration. All such specific assessments shall be due and payable on demand.

7. The Association may require an Owner, other than Declarant, to deposit with the Association an amount not exceeding six times the amount of the original estimated monthly installment for Common Expenses, which sum shall be held, without interest, by the Association as a reserve to be used for paying such Owner's monthly installments for Common Expenses, for paying other obligations due to the Association by such Owner hereunder, and for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment of the Common Expenses as the same comes due, or from making any other payment which the Owner is required to make under this Declaration. Upon the transfer of his Condominium Unit, the amount held in reserve for said Owner shall be refunded to the Owner, less any amount then due by said Owner to the Association, but the amount to be refunded may be transferred to a new Owner upon a settlement sheet adjustment between a seller and

purchaser. Deficiency amounts in any Owner's account shall be promptly restored upon request by the Board to maintain an amount equal to six times the then monthly estimated assessment for such Unit.

8. Creation of Obligation. Common expenses are hereby assessed against each Unit, and the Owners thereof in accordance with this Declaration. No Owner may exempt himself from the liability for payment of his common charges and expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his Unit. The common expenses shall be charged by the Association to the Owners, according to their respective common interest percentages as set forth in Article III, paragraph 1, hereof; provided, however, that prior to completion of all of the Buildings on the Property containing all forty (40) Units, the common expenses shall be charged by the Association to the Owners, based upon (with respect to each substantially completed Unit), a fraction whose numerator is one (1) and whose denominator is the number of Units on which construction is substantially completed. Assessments against the Owners shall be made and approved by the Board of Managers and shall be paid by the Owners and each Owner shall be liable for his share of the common charges, except as otherwise provided in this Article. Multiple Owners of a Unit shall be jointly and severally liable for common expenses and assessments pertaining to their Unit.

#### ARTICLE XVI

##### LIEN FOR NON-PAYMENT OF COMMON EXPENSES

1. The annual, special and specific assessments (including monthly installment thereof) provided for in this Declaration, all other sums assessed by the Board pursuant to any provision of this Declaration, and any and all default assessments and any other charges and fees for which an Owner may become obligated to the Association pursuant to any provision of this Declaration, shall constitute a lien on the specific Condominium Unit to which such assessments and other amount apply, which lien shall be superior and prior to all other liens and encumbrances, excepting only taxes and special assessment liens on the Condominium Unit in favor of any governmental assessing Unit, and all sums unpaid on a First Mortgage, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien the Board of Directors shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed by one of the Board of Directors and shall be recorded in the office of the Clerk and Recorder of the County of Huerfano, Colorado. Any other information which the Board deems proper may also be included in the recorded notice. 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 and attaches without notice at the beginning of the first day of any period for which any assessment

is levied or assessed, and if none, upon the first day on which the indebtedness becomes due in accordance with the provisions of this Declaration. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property, upon the recording of a notice or claim thereof. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, interest at the maximum rate then permitted by the laws of the State of Colorado, and all reasonable attorneys' fees. The Owner shall also be required to pay to the Association all assessments for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Board of Directors shall have the power to bid on the Condominium Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

2. If any assessment, whether annual, special or specific or any monthly installment thereof shall remain unpaid after twenty (20) days after the due date thereof, such unpaid sums shall bear interest from and after the due date thereof at the rate of 18% per annum and the Board of Directors may impose a late charge on such defaulting Owner in an amount not exceeding \$25.00 for each late payment to cover the extra costs and expenses involved in handling such delinquent assessment. In addition thereto, the Association may thereafter bring an action at law or at equity, or both, against any Owner personally obligated to pay the amount due and may also proceed to foreclose its lien against the particular Condominium Unit. In the event that any such action at law or in equity is commenced, or in the event the Association shall counterclaim or crossclaim for such relief in any action, the Association shall be awarded its attorneys' fees incurred in addition to any other relief granted thereunder. It is the intent hereof that any remedy listed herein shall be cumulative to any and all remedies at law or in equity and that a request for any particular remedy shall not be waived by proceeding in a manner to request any one or more other remedies. Any recorded lien for non-payment of the Common Expenses may be released by recording a release of lien executed by a member of the Board of Directors.

3. Any Mortgagee of a Condominium Unit may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Condominium Unit, and upon such payment such Mortgagee shall have a lien on such Condominium Unit for the amounts paid of the same rank as the line of his encumbrance. Notwithstanding anything in this Declaration to the contrary, any First Mortgagee who acquires a Condominium Unit by foreclosure or by a deed in lieu thereof shall acquire title to such Condominium Unit free and clear of any lien for unpaid Common Expenses and shall only be responsible for Common Expense arising after the date upon which such First Mortgagee acquires title to the Condominium Unit.



4. Upon payment of a reasonable fee not to exceed \$30.00 and upon twenty (20) days prior written notice from any Owner, any prospective Owner under a contract for the sale of a Unit, any Mortgagee or any prospective Mortgagee of a Condominium Unit, the Association shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Condominium Unit, the amount of the current monthly installment for Common Expenses, the date that such assessment comes due, the amount of any assessment reserve on deposit with the Association and any credit for advance payments for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless the request for such a statement shall be complied with within twenty (20) days from the receipt thereof, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement and the grantee of the Condominium Unit shall not be liable for, nor shall the Condominium Unit conveyed be subject to, a lien for any unpaid assessments against the subject Condominium Unit. In all other cases, the grantee of a Condominium Unit, except a First Mortgagee who acquires a Condominium Unit by foreclosure or a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his proportionate share of the Common Expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

#### ARTICLE XVIII

##### INSURANCE

1. The Board of Directors shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written by companies duly authorized to do business in the State of Colorado, covering the risks set forth in this Article.

2. The Association shall obtain hazard insurance on the Condominium Project and any Property, the nature of which is a General Common Element, in the form of a master or blanket policy of property insurance in an amount equal to the full replacement value (i.e. 100% of the current replacement cost exclusive of land, foundations, excavation and other items normally excluded from coverage), without depreciation, of the Condominium Project and any such Property which is in the nature of a General Common Element. Said policy or policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of such First Mortgagees as their interest may appear. Said policy or policies shall also include an "agreed amount endorsement" or its equivalent. Said policy or policies shall afford protection against 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, lightning, and water damage, and such other risks as are customarily covered with respect to buildings similar in construction, location and use to those built pursuant to this Condominium Project.

3. In the event the Association retains or hires employees and/or subcontractors, the Association shall prior thereto obtain Workmen's Compensation, Employer's Liability Insurance, and all other similar insurance in the amount and in the form now or hereafter required by law.

4. The Association shall obtain a comprehensive policy of public liability insurance, covering all claims for bodily injury or property damage, in such limits as the Board may from time to time determine but in any event, not less than \$500,000 per injury, per person, per occurrence. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project. All liability insurance shall name the Association, the Board, the Declarant, First Mortgagees, the Owners and the officers of the Association as insureds thereunder.

5. The Association shall obtain fidelity coverage against dishonesty of employees or any other Person handling funds of the Association, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

6. The Association may obtain insurance against such other risks as it shall deem appropriate with respect to the Project, including plate or other glass insurance, insurance for any personal property of the Association located thereon, and errors and omissions insurance with respect to the actions of the Board of Directors and officers of the Association.

7. All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and shall contain a "severability of interest endorsement" or equivalent coverage which would preclude the insurance company from denying the claim of any Owner because of the conduct of the Association or any other Owner. All policies of insurance shall provide that the same may not be cancelled or modified without at least twenty (20) days prior written notice to all of the Owners, First Mortgagees and the Association. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least ten (10) days prior to expiration of the then current policies. All casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney

in fact for all of the Owners, as their interest may appear, which policy or policies shall identify the interest of each Owner (Owner's name and Condominium Unit number designation) and First Mortgagee.

8. Prior to obtaining any policy of casualty insurance and not less frequently than every two years thereafter, the Board shall obtain an appraisal from the insurance appraiser of the company issuing such insurance, which appraiser shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected. In the event that there shall be any damage, destruction or loss to a Unit or any damage, destruction or loss to the General Common Elements, then notice of such damage or loss shall be given by the Association to the First Mortgagee of said Condominium Unit within ten (10) days after the occurrence of such event.

9. Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carrier issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by the Owner. Insurance coverage on improvements and fixtures installed by an Owner, and other items of personal property belonging to an Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors and the Association shall have no responsibility therefor.

10. Nothing shall be done or kept in any Condominium Unit or in or on the General Common Elements, or any part thereof, which would result in the cancellation of the insurance on the Condominium Project, or any part thereof, or increase the rate of the insurance on the Condominium Project, or any part thereof, over what the Association, but for such activity, would pay, unless the Owner wishing to engage in such activity first secures the prior written approval of the Association. In any event, if the rate of insurance shall be so increased, the Owner whose activity results in such increased rate of insurance shall be solely responsible for payment of said increase and the Association may assess the Owner therefor.

11. At the time of purchase by an Owner of his Condominium Unit, the Owner shall pay to the Association an amount equal to the sum of the annual insurance premiums for hazard insurance and public liability insurance multiplied by the fractional interest of the Owner in the General Common Elements, and thereafter, the cost of such insurance shall become part of the Owner's regular annual assessment, payable in monthly installments and commencing with the first monthly assessment after closing. The amount in said insurance reserve shall be refunded to the Owner at the time at which he conveys his Condominium Unit to a subsequent grantee, or said refund may be accomplished by a credit and debit on a

statement of settlement at closing between the seller and purchaser.

### ARTICLE XVIII

#### MORTGAGING A CONDOMINIUM UNIT

1. Any Owner shall have the right from time to time to mortgage or encumber his Condominium Unit by deed of trust, mortgage or other security instrument. The Owner of a Condominium Unit may create junior Mortgages (junior to the lien, deed of trust or other encumbrance of the First Mortgagee) on his Condominium Unit on the following conditions: (1) that any such junior Mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Common Expenses and other obligations created by this Declaration, and the Bylaws; and (2) that the Mortgagee under any junior Mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior Mortgagee upon written request of one or more of the Board of Directors of the Association, and if not furnished, may be expected by the Association as attorney in fact for such junior Mortgagee.

### ARTICLE XIX

#### ADDITIONAL RESTRICTIVE COVENANTS AND OBLIGATIONS

1. No Owner and no Owner's Guest shall do anything or keep anything in or on the Project which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No Owner may request any variance or other deviation from any applicable zoning regulation or requirement without first securing the unanimous written consent of the Owners of all Units located in the Building in which the Unit for which the request is made is located.

2. No noxious or offensive activity shall be carried on or upon any part of the Project nor shall anything be done or placed on or in any part of the Project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of

the Project which is unreasonably bright or causes unreasonable glare.

3. No unsightliness or waste shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the General Common Element, nor shall any Owner hang, erect, affix or place anything upon any of the General Common Elements (except items within the boundaries of his Unit), and nothing shall be placed on or in windows or doors of Units which would or might create an unsightly appearance.

4. No Owner or Owner's Guest shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Units, the use of General or Limited Common Elements, or otherwise.

5. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property, including the Project or any Unit therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and to the extent that the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorney's fees and interest at the maximum rate then permitted under the laws of the State of Colorado) shall be secured by a lien on the Condominium Unit of such Owner as provided hereinabove for assessments or other charges owed by the Owner to the Association.

6. Any lease by an Owner of his Condominium Unit shall be for the entire Condominium Unit, shall be in writing, and shall provide that the provisions of the lease and the lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration and to the provisions of the Articles and Bylaws. Any failure by the lessee to comply therewith shall be a default under the lease. Any Owner who leases his Condominium Unit shall, within ten (10) days after the execution of such lease, forward a copy of the same to the Board.

7. Parking spaces which are designated as Limited Common Elements, if any, shall be for the exclusive use of the Owner and the Owner's Guests respecting the Condominium Unit owned by the Owner. No part of the Project except those areas specifically designated as parking spaces, shall be used for parking, storage, or accommodation area for any property, unless specifically approved in advance by the Association, and parking spaces shall be used solely for the temporary parking of vehicles. No

overnight parking or permanent storage of any vehicle in any parking space or spaces shall be permitted.

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

9. No structural alterations to any Condominium Unit or to any General Common Element shall be done by any Owner without the prior written approval of the Association.

10. No trash, ashes or other refuse or debris may be thrown or dumped on the Property but shall be removed from the Property only pursuant to the trash removal service arranged for by the Association. The burning of refuse out of doors shall not be permitted. No incinerators or other device for the burning of refuse in doors shall be constructed, installed or used by any person except as approved by the Association.

11. No fences, walls or other barriers shall be permitted except with the written consent of the Association.

12. A determination as to whether or not any activity or occurrence shall constitute a violation of this Article shall be made by the Board of Directors and shall be final.

## ARTICLE XX

### ASSOCIATION AS ATTORNEY IN FACT

1. Each and every Owner, by acceptance of a deed from the Declarant or from any Owner shall and hereby irrevocably constitutes and appoints the Association as his, its, and their true and lawful attorney in fact in his, its and their name, place and stead for the purpose of dealing with the Condominium Project upon its damage, destruction or obsolescence as hereinafter provided in Articles XXI and XXII. 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 herein provided.

2. 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. Any document executed by the Association as attorney in fact shall be deemed to be properly executed by the Association in said capacity if executed by the Association's president and secretary.

## ARTICLE XXI

### DAMAGE OR DESTRUCTION

1. As soon as practicable 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. As used in this Article, "repair and reconstruction" shall mean restoring the damaged or destroyed part of the Condominium Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

2. As soon as practicable 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 appropriate action to affect repair and reconstruction and no consent or other action by any Owner shall be necessary in connection therewith.

3. Except as otherwise provided in this Article, the proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost or such repair and reconstruction, the Association may assess and collect in advance from all Owners a special assessment sufficient to provide funds to pay such estimated or actual cost of repair and reconstruction. In the event an Owner fails to pay said assessment in a timely manner, the Association, as said Owner's 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 cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association as attorney in fact. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney in fact, in the following order: (a) for payment of taxes and special assessment liens in favor of any governmental entity; (b) for payment of the balance of the lien of any First Mortgage; (c) for payment of any unpaid Common Expenses; (d) for payment of junior Mortgages in the order of and to the extent of their priority; and (e) the balance remaining, if any, shall be paid to the Owner.

4. The insurance proceeds held by the Association and the amounts received from the special assessments provided for in paragraph 3 of this Article constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall

be deemed that the first money disbursed and payment for the cost of repair and reconstruction shall be made from insurance proceeds, and the balance from the special assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contribution each Owner made pursuant to the special assessments the Association made under paragraph 3 of this Article.

5. Notwithstanding paragraphs 3 and 4 of this Article, if Owners of 75% of the undivided interest in the General Common Elements, and 100% of the First Mortgagees of the Condominium Units agree not to repair and reconstruct as provided in the previous paragraphs of this Article, then the Condominium Project shall be sold upon the Association's first recording a notice setting forth such facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining Project shall be sold by the Association, as attorney in fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the Articles and Bylaws. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear in the policy or policies), 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 by the name of the Owner. Thereafter each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be based upon each Owner's percentage interest in the General Common Elements. The total funds of each account shall be used and 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 subparagraphs (a) through (e) of paragraph 3 of this Article. The provisions contained in this paragraph shall not hinder the protection given to a First Mortgagee under a Mortgage endorsement.

6. Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

## ARTICLE XXII

### OBSOLESCENCE

1. All the Owners of at least 90% of the undivided interest in the General Common Elements may agree that the Condominium Project is obsolete and adopt a written plan for the renewal and reconstruction thereof, which plan must have the approval of all First Mortgagees on all Condominium Units at the time of the adoption of such plan. 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.

2. All of the Owners of at least 90% of the undivided interest in the General Common Elements may agree that the Condominium Units are obsolete and that the Condominium Project should be sold. Such an agreement must also have the approval of all of the First Mortgagees on all Condominium Units at the time such agreement is made. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire Project shall be sold by the Association, as attorney in fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. 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. From each separate account the Association, as attorney in fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraphs (a) through (e) of paragraph 3 of Article XXI.

#### ARTICLE XXIII

#### CONDEMNATION

1. If all or any part of the Project shall be taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, all compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

2. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, Condominium Ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interest in the General Common Elements, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent that is relevant and applicable.

3. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium Ownership hereunder shall not

terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages and other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of, or injury to, the General Common Elements shall be apportioned among the Owners in proportion to their respective undivided interest in the General Common Elements; (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (c) The respective amounts allocated to the taking of or injury to, a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Condominium Unit involved; and (d) the amount allocated to consequential damages and any other takings 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 employ such allocation to the extent that is relevant and applicable. Any distribution of the Condemnation Award made pursuant to this paragraph shall be made by checks payable jointly to the Owners and their First Mortgagees.

4. Notwithstanding anything in this Article to the contrary, in the event that all or any part of the Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, as set forth in paragraphs 2 and 3 of this Article, each Owner shall have the exclusive right to claim all of the award made for trade fixtures installed by each Owner, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation of a displaced business concern.

5. The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such share shall be paid into separate accounts and disbursed as soon as practicable, provided that in the event of a complete taking such distribution shall be made in the same manner as is provided in subparagraphs (a) through (e) of paragraph 3 of Article XXI.

6. In the event the partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest in the General Common Elements shall thereupon terminate, and the Association, as attorney in fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the Ownership and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and

shall submit such reallocation to the Owners of remaining Condominium Units for amendment of this Declaration as provided in Article XXV hereof.

#### ARTICLE XXIV

##### AMENDMENT

1. The provisions of this Declaration may be amended, terminated or revoked, in whole or in part, at any time and from time to time, in accordance with the provisions of this Article, by an instrument recorded in the records of the office of the Clerk and Recorder of Huerfano County, Colorado, 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, termination or revocation.

2. This Declaration may not be amended, terminated or revoked without the approval of not less than Owners representing an aggregate ownership interest of 80% of the General Common Elements and 80% of all First Mortgagees on all Condominium Units at the time approval is sought (based upon one vote for each Mortgage owned), except that no provision of this Declaration requiring the approval or consent of more than 80% of such First Mortgagees may be amended without the consent of at least the minimum number of First Mortgagees whose approval or consent is required under such provision. The foregoing approval shall be indicated by signature of said Owners and First Mortgagees on the instrument recorded for the purpose of evidencing the amendment, revocation or termination; provided, however, that no amendment, revocation or termination of this Declaration shall be accomplished so long as the Declarant is holding any Condominium Unit for rental or sale without first securing the prior written consent of Declarant, and no amendment, revocation or termination of this Declaration which acts in any manner to amend or modify any of the rights of Declarant contained in this Declaration shall be accomplished without first securing the prior written consent of Declarant. The consent of any junior Mortgagee shall not be required under the provisions of this paragraph.

#### ARTICLE XXVI

##### MISCELLANEOUS

1. In the event that there shall be any conflict between the provisions of this Declaration and the Articles, Bylaws, or ~~rules and regulations~~ of the Association, the provisions of this Declaration shall be deemed controlling.

2. Each Owner's address for purpose of any notice and communications permitted or required to be given hereunder to Owners shall be presumed to be the mailing address of the Unit or Units owned by the Owner, unless the Association is given notice of a different address pursuant to a proper notice as required by

this paragraph. All notices and communications intended to be served upon an Owner shall be personally delivered or sent by first class mail, postage prepaid, addressed in the name of the Owner at the above described address. All notices or communications intended to be served upon the Association shall be sent by registered or certified mail, postage prepaid, return receipt requested, to , until such address may be changed by a notice or change of address mailed to each Owner at the above described Owner's address. All such notices and communications shall be deemed given on the date of mailing.

3. Subject to the provisions of Article XVIII hereof, no violation or breach of or failure to comply with any provision of this Declaration, and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage, or other lien on any Condominium Unit taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of the County of Huerfano, Colorado, prior to the time of recording in said office of an instrument describing the Condominium Unit and listing the name or names of the Owner or Owners of fee simple title to the Condominium Unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such First Mortgage, or other lien or the title or interest acquired by any purchaser upon foreclosure of any such First Mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration; provided, however, that violation of breaches of, or failure to comply with, any provision of this Declaration, which occurred prior to the vesting of the fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

4. The provisions of this Declaration shall be in addition and supplemental to applicable provisions of law.

5. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

6. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association, and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

7. In the event that any provision of this Declaration shall be deemed illegal or unenforceable, then the remaining provision of this Declaration shall be fully enforced as if the invalid or unenforceable provision were not contained herein,

which invalid or unenforceable provision shall be deemed fully severable.

8. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Amended Declaration this 10<sup>th</sup> day of August 1983.

MOYER-JACKSON-PHIPPS, A  
Colorado Partnership, by

Joe Jackson, Jr.  
Joe Jackson, Jr.

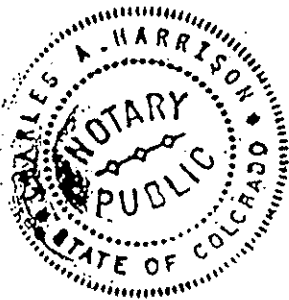
John Phipps  
John Phipps

STATE OF COLORADO            )  
  ) ss.  
County of Huerfano            )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of August 1983, by Joe Jackson, Jr., and John Phipps, partners of Moyer-Jackson-Phipps, A Colorado Partnership.

My Commission Expires: June 15, 1985

Charles A Harrison  
Notary Public



CERTIFICATE OF RATIFICATION

Panadero Ski Corporation, a Colorado corporation, does hereby certify that it ratifies and approves the foregoing Amended Declaration of Covenants, Conditions and Restrictions of Sunwatcher Condominiums.

PANADERO SKI CORPORATION, by

[Signature]

STATE OF COLORADO )  
County of Huerfano ) ss.

The foregoing instrument was acknowledged before me this 2<sup>ND</sup> day of August 1983, by Dwight A. Harrison, as the President of Panadero Ski Corporation, A Colorado Corporation, on behalf of the corporation.

My Commission Expires: June 15, 1985

Charles N. Harrison  
Notary Public



MORTGAGEE'S CERTIFICATE OF RATIFICATION

Trinidad National Bank does hereby certify that it ratifies and approves the foregoing Amended Declaration of Covenants, Conditions and Restrictions of Sunwatcher Condominiums.

TRINIDAD NATIONAL BANK, by

Vern Ressler, Loan Officer

STATE OF COLORADO )  
County of Las Animas ) ss.

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of July, 1983, by Vern Ressler, as the Loan Officer of Trinidad National Bank on behalf of Trinidad National Bank.

My Commission Expires: 3/4/85

Arlene Robinson  
Notary Public

125 N. COMMERCIAL  
TRINIDAD, CO 8102