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Joanne M. Reitinge Recorder

411073
Reception No.

By *Jan L. Lioni* Deputy

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
THE ALBERTINE

THIS DECLARATION is entered into the 24th day of October, 1988, by Sandra I. Cook, hereinafter referred to as the "Declarant";

W I T N E S S E T H :

WHEREAS, Sandra I. Cook, is the owner of the real property situated in the County of Gunnison, State of Colorado, which is described in Exhibit 1 attached hereto and incorporated by reference; and,

WHEREAS, Declarant desires to establish upon said property, certain conditions and restrictions which shall run with the land;

NOW THEREFORE, Declarant hereby publishes and declares that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations, and obligations shall run with the land encompassing the Property and shall burden and benefit Declarant, its grantees, lessees, successors, 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, executors, administrators, devisees, and assigns.

1. Definitions. As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

A. "Unit" means an undivided one-fourth interest as a tenant in common in the Property and subject to the Period of Use restriction contained in Section 2 below.

B. "Owner" means the person or persons, as hereinafter defined, owning an undivided interest as a tenant in common in fee simple in the Property.

C. "Association" means The Albertine Association, Inc., a Colorado nonprofit corporation, its successors and assigns, the Articles and Bylaws of which, as hereinafter defined, along with the Declaration, shall govern the administration of the Property, the members of which shall be all of the Owners.

D. "Building" means the building improvements erected on the Property, the same being a single family home.

E. "Common Expenses" means and includes:

(1) all sums lawfully assessed against the Owners by the Board, as hereinafter defined:

(2) ~~expenses of administration, maintenance,~~

~~provisions of this Declaration and the Bylaws; or~~

(4) expenses agreed upon as Common Expenses by a 75% vote of the Owners.

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

G. "Mortgage" means and includes any mortgage, deed of trust or other assignment or security instrument creating a lien on any Unit, and "Mortgagee" shall include any grantee, beneficiary, or assignee of a Mortgage.

H. "Percent of Responsibility". In order that the common expenses of this Property be shared proportionately and equitably by the owners of the Property, the common expenses shall be prorated in accordance with a Percent of Responsibility equal to 25% per unit or interest.

I. "Property" means the parcel described on Exhibit 1 together with improvements thereon, common furnishings, and elements appurtenant thereto.

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

K. "Managing Agent" means the Person employed by the Board to perform the management and operational functions of the Property.

L. "Bylaws" means the Association's Bylaws.

M. "Articles" means the Association's Articles of Incorporation.

N. "Guest" means any agent, employee, guest, licensee, invitee, or customer of an Owner.

O. "Declarant" means the Declarant named herein.

P. "Declaration" means this Declaration together with any supplement or amendment hereto recorded in the office of the Clerk and Recorder of Gunnison County, Colorado.

Q. "Time-Span Estate" or "unit" or "interest" means:

(1) An undivided interest in a present estate in fee simple in the Property, the magnitude of the interest being the Percent of Responsibility; and

(2) An exclusive right to possession and occupancy of the Property during an annually recurring period of time established according to the Period of Use as more fully set forth in Exhibit 2 and deed conveying the time-span estate.

R. "Common Furnishings" shall mean furniture and furnishings for the Property or other personal property from time to time owned or held for use in common by all the Owners.

S. "Maintenance Weeks or Maintenance Period" shall mean the two (2) weeks set aside for maintenance and restoration of the Property as set forth in Exhibit 2 attached hereto and incorporated by reference.

2. Period of Use. Each owner shall have the exclusive right to the possession and occupancy of the Property for approximately thirteen (13) weeks per year as designated in Exhibit 2 attached hereto (which periods of time are herein referred to as "Periods of Use"). The table set forth on Exhibit 2 shows the Periods of Use allocated to "Owner A", "Owner B", "Owner C", and "Owner D" for October through December, 1988 and years 1989-1992, with 1989 being Year One, 1990 being Year Two, 1991 being Year Three and 1992 being Year Four. After Year four, the next succeeding calendar year shall once again be Year One and the schedule shall repeat on the same basis thereafter. The owner letter ("A" through "D") designated to each Owner shall be as set forth immediately following the reference to a particular interest or Unit on the legal description on the deed from Declarant to each Owner conveying the undivided one-fourth interest to such Owner and all subsequent conveyances from an Owner to his successor or assign shall, immediately following the legal description of the Unit, include the same Owner letter designation, as follows:

An undivided one-fourth interest in the East 50 feet of the West 75 feet of Lots 1, 2, 3, 4 and 5, Block 65, Town of Crested Butte, County of Gunnison, State of Colorado consisting of ownership interest [A, B, C or D], as set forth in the Declaration of Covenants, Conditions and Restrictions of The Albertine, recorded in Book _____ at Page _____ of the

records in the office of the Gunnison County Clerk and Recorder.

3. **Permitted Uses; Maintenance.** The Property may be used only in accordance with applicable zoning ordinances and regulations, this Declaration of Covenants, Conditions, and Restrictions, and the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association. Each Owner, during his Period of Use, shall keep the Property in as good order and condition as when his Period of Use commenced, ordinary wear and tear excepted. No Owner shall commit waste with respect to the Property or permit anything to be done or kept in the Property which would increase the rate of insurance upon the Property or the Common Furnishings. Except as otherwise provided in this Declaration, or by direction of the Manager or Managing Agent when authorized by a majority vote of the Owners, or if required to prevent damage or injury to persons or property in an emergency, no Owner shall make or authorize any alterations, additions, improvements, decorations or repairs to the Property or remove, modify or add any Common Furnishings therefrom unless such Owner obtains the prior written consent of all other Owners in writing. Each Owner shall be solely responsible for charges attributable to telephone calls made during such owner's Period of Use in excess of the monthly service charges and for charges for any other special services for the exclusive benefit of such Owner. An Owner may permit persons designated by him (by writing to the Manager or the managing Agent) to use the Property during his Period of Use; however, any such permitted use by others shall not relieve such Owner from the obligation to keep the Property in good order and conditions and to pay for telephone and other special services incurred during such Period of Use and such Owner shall be responsible for all negligent or intentional acts or omissions of his tenants or guests.

4. **Failure to Vacate.** If any Owner (or other person occupying the Property with such Owner's consent) fails to vacate the Property prior to the end of his Period of Use or otherwise uses or occupies the Property during a Period of Use assigned to another Owner or a Maintenance Period, or by his negligence or failure to maintain the Property during his Period of Use renders the Property less suitable for use as a residential dwellings, then such Owner (a) shall be deemed to be in unlawful detention of the Property pursuant to Colorado's Forcible Entry and Detainer Statute and the Manager or Managing Agent shall have the right on behalf of the other Owners to bring an action against the defaulting owner (or other person occupying the Property with the Owner's consent) pursuant to such Statute for the purpose of regaining possession of the Property and/or to collect any damages, including liquidated damages, hereinafter provided for resulting from such unlawful detention or other action each Owner hereby waiving any and all notices to which he may otherwise be entitled pursuant to such Statute prior to the commencement of

any such action; and (b) shall pay to the Manager as liquidated damages for each day or portion thereof that the Property is wrongfully occupied or less suitable for use an amount equal to two times the rental value of the Property during the period of unauthorized occupancy, such value to be determined by the Managing Agent based on current rental rates for similar units in Crested Butte and Mt. Crested Butte, Colorado. Any Owner who obtains alternative accommodations for himself or guests during a time that he is deprived of his Period of Use because of the default of another Owner shall be paid by the Manager the reasonable rental value of suitable alternative accommodations, such value to be determined by the Manager, provided that the Manager will not be required to make any payment unless and until it has received sufficient payments from the defaulting Owner for such period and any excess funds collected by the Manager shall be used for the benefit of the Property.

5. **Percentage of Ownership.** Each Owner shall own an undivided one-quarter interest in the Property. If any person or persons own more than one Unit, such person or persons shall be treated as a separate Owner for each such quarter-interest owned.

6. **The Association.**

A. **General Purposes and Powers.** The Association, through the Board or the Managing Agent, shall perform functions and hold and manage property as provided in this Declaration so as to further the interests of Owners of Units. It shall have all powers necessary to effectuate such purposes.

B. **Membership.** Each Owner of a Unit shall be a member of the Association. Membership is appurtenant to the Unit, and the Unit's membership shall pass with title to the Unit. Each Owner is entitled to the benefits and subject to the burdens of membership. Association membership is limited to Owners of Units.

C. **Board of Directors.** The Board of Directors will manage the Association's affairs. The Board may delegate any portion of its authority to an executive committee or to a Managing Agent. There shall be four directors. Each owner of an undivided one-fourth interest in the Property shall be entitled to designate one individual, who may be but need not be an Owner, to serve as a director of the Association.

D. **Voting Rights of Owners.** Each Owner shall have one vote. Cumulative voting shall be permitted.

The person or persons with ownership interests in a Unit shall designate in writing a representative to cast the vote of their Unit. In the absence of such designation, the Board shall designate one of the persons with ownership interests in the Unit as the Units's representative.

E. Bylaws and Articles. The Association's purposes and powers and the Owner's rights and obligations set forth in this Declaration shall be amplified by the Association's Articles and Bylaws.

7. Managing Agent: Selection, Duties, and Responsibilities.

A. The management and maintenance of the Property, the acquisition and maintenance of Common Furnishings, the administration of the Owner's use and occupancy of the Property, and the payment of expenses shall be controlled by the Association which may appoint a Managing Agent. The Association may replace the managing Agent or designate a substitute Managing Agent at any time. The Managing Agent shall have exclusive possession of the Property during all Maintenance Periods and is expressly authorized on behalf of the Owners to do any of the following not inconsistent with directions given by the Owners or Board:

(1) To repair, maintain, repaint, remodel, furnish, or refurbish the Property or any part thereof; to establish reserves for anticipated costs, including the acquisition and replacement of Common Furnishings and to acquire and pay for materials, supplies, furniture, furnishings or services which the Managing Agent deems necessary or proper for the Maintenance and operation of the Property; provided, however, the Managing Agent shall not make any capital expenditures which exceed One Thousand Dollars (\$1,000) in any calendar year without the prior approval of a Majority of Owners of the Property or a Majority of the Board of Directors of the Association.

(2) To pay all taxes and assessments levied against the Property, including assessments imposed on the Property by the Association and all costs and charges affecting the Property and to discharge, contest, or protest liens or charges against the Property.

(3) To determine and pay the costs of electricity, telephone, gas, cable television and other utility services for the Property.

(4) To propose from time to time, and, upon majority vote of the Board or Owners, adopt and enforce reasonable rules and regulations relating to the possession, use and enjoyment of the Property by the Owners, provided that a majority of the Board or Owners may rescind or modify such rules and regulations so long as not inconsistent with the provisions of this Declaration.

(5) To obtain and pay the costs of legal and accounting services necessary in the maintenance or operation of the Property.

(6) To enter the Property at any time for the purpose of effecting emergency repairs.

(7) To impose and collect assessments upon the Owners subject to the right of a Majority of Owners or a Majority of the Board to modify the amount of assessment imposed by the Managing Agent.

(8) To maintain and defend on behalf of all of the Owners any and all suits or causes arising out of the ownership of the Property.

(9) To commence and maintain on behalf of any Owner(s), upon the request of such Owner(s), any legal action against any other Owner(s) or any other person for the breach of any covenant contained in this Declaration or for the breach of any provision contained in the Association Articles or Bylaws or for wrongful occupation of the Property.

(10) To obtain and pay the cost of: (a) insurance covering the Property and Common Furnishings against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage; (b) public liability insurance, insuring against liability of personal injury or property damage resulting from an occurrence in or about the Property; and (c) any other insurance deemed necessary or desirable by the Managing Agent, as approved by the Board. The insurance policies shall cover such risks, be written by such insurers and in such amounts as the managing Agent shall deem proper as approved by the Board.

(11) To do all other acts necessary for the operation and maintenance of the Property.

(12) To delegate in writing the authority and responsibilities hereunder to one or more others.

(13) To collect the Property expenses from each Owner and to enforce any Owner's obligations. A defaulting Owner shall be liable for all costs incurred in such action, including reasonable attorneys' fees.

(14) To perform any other act required to be performed by the Managing Agent under this Declaration or by direction of the Owners or Board.

B. Except as expressly provided in paragraph 7 (A)

the management, use and occupancy of the Property shall be reserved to and vested solely in the Owners.

8. **Financing.** Each Owner shall pay the Managing Agent his share of the monthly payment under any promissory note secured by deed of trust which encumbers more than such Owner's undivided interest in any Property (a "Blanket Note and Deed of Trust"); and the Managing Agent shall then remit the monthly payments under the Blanket Note and Deed of Trust directly to the holder thereof. If no such Blanket Note and Deed of Trust exists, then Owners shall not be required to make any such payments.

9. **Assessments.** Subject to paragraph 7(A)(7), above, Managing Agent shall have the power to levy assessments against the Owners. Each Owner (or if any Owner is more than one person, all such persons, jointly and severally) by acceptance of a deed to an interest in the Property, shall be personally obligated, jointly and severally, to observe and be bound by each and every covenant and provision set forth in this Declaration and the Association Articles, Bylaws and Rules and Regulations, including, without limitation, the obligation to pay assessments.

A. **Assessments for Common Expense.** All Owners shall be obligated to pay the estimated assessments imposed to meet the Common Expenses of the Property from and after the conveyance of the first Unit to such Unit's original purchaser. The assessments shall be made pro rata according to each Unit's Percent of Responsibility.

Declarant shall have an obligation to pay the estimated Common Expense assessment on Units owned by Declarant imposed to meet Common Expenses.

Assessments for the estimated Common Expenses shall be due monthly, in advance, on the first day of each month. The Managing Agent or Board of Directors 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 and that Owner's Unit Percent of Responsibility at that time. Contributions for monthly assessments shall be prorated if the ownership of a Unit commences on a day other than the first day of a month. The assessments made for Common Expenses shall be based upon the requirements deemed to be such aggregate sum as the Managing Agent or Board of Directors shall from time to time determine appropriate to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Property, which sum may include, among other things: expenses of management; taxes and special assessments, until separately assessed; premiums for insurance; landscaping and care of grounds; common lighting, heating and other utilities; repairs and renovations; trash collections; wages; legal and accounting fees; capital expenditures not exceeding

\$1,000.00 in any one calendar year (unless a greater amount is approved by a majority of Owners or the Board); expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration; deficits remaining from a previous period; and other costs and expenses relating to the Property. Further, it shall be mandatory to establish and segregate, out of such monthly assessments, a contingency or reserve fund for the repair, replacement and maintenance of items that must be replaced periodically. The omission or failure 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 such assessment.

Any Owner or Mortgagee may inspect the Association's records of receipts and expenditures at any reasonable time during convenient weekday business hours, and, upon ten days' notice to the Board of Directors or Managing Agent, and upon payment of a reasonable fee, any Owner or Mortgagee of such Owner shall be furnished a statement of account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. At the end of any calendar year, the Board of Directors may, but shall not be required to, refund to each Owner his proportionate share of funds then held by the Association which are not deemed to be necessary to meet the Common Expenses.

The Board of Directors or a Majority of Owners 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 necessary to keep the Property as a first class residential property or for any other purpose consistent with this Declaration. Such special assessment shall be borne by the Owners in accordance with each Owner's Percent of Responsibility and shall be due and payable as determined by the Board of Directors or Majority of Owners.

B. Extraordinary Assessment. The Managing Agent, the Board or a Majority of Owners may make an extraordinary assessment against any Owner for those amounts expended by the Managing Agent for the benefit of such Owner, including, but not limited to, repairs and replacements caused by the dereliction, negligence or willful acts of any Owner, its family, guests, employees, licensees, and invitees, telephone charges incurred during any Owner's Period of Use (whether or not such charges were incurred by or with the consent of such Owner), for the maintenance, repair, and replacement of any portion of the Property or the Common Furnishings therein caused by the negligence or willful acts of any Owner, his family, guests, employees, licensees, or invitees or the failure of an Owner to perform any acts of maintenance which he is obligated to perform hereunder, or to reimburse the Managing Agent or any non-defaulting Owner to cure any Owner's breach or default under this

Declaration (the Managing Agent and non-defaulting Owners are hereby given the option but not the obligation to cure such breach or default), or the amounts due by a delinquent Owner as a result of his wrongful occupancy of the Property outside his Period of Use or his failure to deliver the Property in a condition suitable for use by others. The Managing Agent may add to any extraordinary assessment an amount to be determined by the Managing Agent but not to exceed twenty-five percent (25%) of the total amount thereof to cover overhead and administrative costs.

C. **Delinquent Assessments.** In the event any assessment is not paid by the due date thereof, such assessment shall bear interest from the due date until the date paid at the rate of twenty-four percent (24%) per annum or the maximum rate permitted by law, whichever is less, and may be subject to late charge as may be set by the Managing Agent by prior written notice to all of the Owners. All payments on account shall be first applied to interest and late charges and then to the assessment payment first due. In the event it shall become necessary for the Managing Agent to institute legal action to collect any delinquent assessments, whether by foreclosure of the lien hereafter created or otherwise, the delinquent Owner shall pay, in addition to the assessment, late charges and interest herein provided, all costs of collection, including attorney's fees and costs incurred in enforcing payment.

D. **Lien for Assessment.** The Owners and/or the Association are hereby granted a lien against each Owner's interest in the Property for any payment or payments which such Owner fails to make as required by this Declaration. Such lien shall relate back in priority to the date of the recording of this Declaration and shall be evidenced by the recording of a notice thereof in the office of the Clerk and Recorder of Gunnison County, Colorado, which notice may be signed by an officer of the Association, by the Owners or by the Managing Agent as their duly appointed agent; provided, however, such lien shall be subject to and shall not affect the right of a holder of any first deed of trust recorded prior to the recording of the notice of such lien. The lien may be foreclosed by the Association, by the other Owners or by the Managing Agent, on behalf of the Association or other Owners and upon the request of the Association or a majority of the other Owners, shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against him and to obtain judgment for the amount of the assessments due, plus costs and attorney's fees as herein provided. The Association, Managing Agent or any of the other Owners shall have the power to bid in at the foreclosure sale, and if title is obtained, to hold, mortgage, encumber or convey the same. Any property or funds recovered or obtained by the Association or Managing Agent in such proceedings shall be held by the Association or Managing Agent for the benefit of the other defaulting Owners; provided, however, the Association or

Managing Agent shall first reimburse itself from such property or funds all amounts advanced by the Association or Managing Agent which gave rise in whole or in part to such lien.

E. **Indemnification of Owners.** Each owner shall have a right of contribution and indemnification against any loss or damage suffered as the result of the failure of another Owner to pay his share of any regular or special assessment or any fines levied by the Association under this Declaration, or to otherwise comply with the terms of the Declaration, the Articles of Incorporation, or Bylaws of the Association.

F. **No Exemption for Non-Use.** No Owner shall exempt himself from liability for payment of amounts payable hereunder either by waiver of the use or enjoyment of his Period of Use, by abandonment of his Period of Use or otherwise.

G. **Assessment Reserves.** 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 common assessment, which sum shall be held, without interest, by the Association as reserve to be used for paying such Owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment of the monthly common assessment as the same comes due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his transferee for any unused portion thereof. Such reserves shall at all times remain as capital of the Association.

H. **Insurance Premium.** Premiums for all insurance obtained by Managing Agent as authorized by this Declaration shall be part of the assessments levied by the Managing Agent and the Managing Agent shall pay such premiums from the fund created by the assessments. All policies of insurance shall contain a standard mortgagee's clause in favor of the holder of any deed of trust encumbering an interest in the Property to the extent an Owner advises Managing Agent of the name and address of such holder.

I. **Owner's Obligation for Payment of Assessments.** The amount of the Common Expenses and/or any special assessment assessed against each Unit shall be the personal and individual debt of the Owner or Owners thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses and/or special assessments and costs of suit and attorney's fees shall be maintainable without foreclosing or waiving the lien securing same. No Owner may exempt himself from liability for his contribution towards the Common Expenses and/or any special assessment by waiver of the use or enjoyment of any of the general common elements or by abandonment of his Unit.

10. **Remodeling and Repair.** Except for maintenance, repairs, and renovations which the Managing Agent is authorized to do as provided in paragraph 7 and except as otherwise provided herein, neither the Property nor Common Furnishings shall be altered, remodeled or renovated unless such alteration, remodeling, or renovation is approved in writing by a majority of the Owners or by the Association Board of Directors. Upon such approval, the Managing Agent may effect such alteration, remodeling or repair and the cost thereof shall be assessed against the Owners; provided, however, the Managing Agent shall have no obligation to commence such work until he has received all of the funds necessary to pay for the cost of the work. No Owner shall cause any material to be furnished to the Property or any labor to be performed therein or thereon, unless the same is approved by the majority vote of the Owners or Board of Directors or is otherwise required under this Declaration. Each Owner shall indemnify each other Owner and hold such other Owner harmless against any loss, damage, claim, or liability arising from such Owner's violation of this paragraph, including, but not limited to, the cost of such unauthorized labor or material or the cost of removing the same.

11. **Insurance.**

A. The Board of Directors or Managing Agent shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financially responsible and able companies licensed to do business in Colorado, covering the risks set forth below. The types of coverages to be obtained and risks to be covered are as follows, to-wit:

(1) Insurance against a loss or damage by fire and lightning, and such other hazards as are customarily covered in single family residences in the County of Gunnison, Colorado, under extended coverage and all risk endorsements. Said casualty insurance shall insure the Property together with all equipment, furniture, and fixtures contained therein in an amount equal to the full replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each mortgagee, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of such mortgagee as their interest may appear.

(2) If the Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of Flood Insurance has been made available under the national Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Property in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of

the unpaid principal balances of the mortgages on the Units comprising the Property.

(3) Bodily injury and property damage liability insurance in such limits as the Board may from time to time determine, but not in an amount less than \$500,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering all claims for bodily injury or property damage. 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 Property. All liability insurance shall name the Association, the Board, the Managing Agent, the Declarant, mortgagees, the Owners and the officers of the Association, as insureds thereunder.

(4) Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees and subcontractors of the Association in the amounts and in the forms now or hereafter required by law.

(5) Fidelity coverage against dishonesty of employees or any other Person handling funds of the Association, destruction or disappearance of money or securities and forger. 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, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Property, including plate or other glass insurance, insurance for any personal property of the Association located thereon, errors and omissions insurance with respect to the actions of the Board of Directors and officers of the Association.

B. All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least twenty (20) days' prior written notice to all of the Owners, 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 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 Unit number designation) and Mortgagee.

C. Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions of this insurance paragraph 11, 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 Property, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full replacement cost with an agreed amount endorsement. Determination of maximum replacement value shall be made periodically, and each Mortgagee, if requested, shall be furnished with a copy thereof, within thirty (30) days after receipt of such written appraisals. Such amounts of insurance shall be adjusted periodically in accordance with their currently determined maximum replacement value.

D. Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

E. Insurance coverage on improvements, fixtures, and furnishings, including draperies, unattached carpeting and appliances, wallpaper, and other items of personal property belonging to an Owner, and public liability coverage within each Unit shall be the responsibility of the Association.

F. In the event that there shall be any damage, destruction or loss to the Property, then notice of such damages or loss shall be given by the Association to the Mortgagees of said Units within ten (10) days after the occurrence of such event.

12. **Damage or Destruction.** In the event of any damage or destruction to the Property or the Common Furnishings, unless otherwise instructed in writing by all of the Owners, the Managing Agent, upon receipt of all the funds reasonably estimated by Managing Agent which are required to pay for the cost of repair, shall forthwith cause such damage to be repaired and shall apply any available insurance proceeds to the cost of repair. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, the Managing Agent shall assess and the Owners shall pay the cost thereof or deficiency in proportion to their ownership interests in the Property unless the damage was caused by the intentional or negligent act or omission of any Owner, his family, guests, invitees, or lessees, in which event the cost of repair or deficiency shall be paid by such Owner.

Any insurance proceeds allocable to the Property and payable to the Owners which are (a) in excess of the cost of repair or restoration or (b) not required to repair or restore the Property or the Common Furnishings or any part thereof or paid to compensate any one or more Owners for loss or damage to their individual person or property (in which case such distribution shall be with due regard to the loss or damage incurred), shall be distributed to the Owners in accordance with their percentage of responsibility.

13. **Mortgage or Conveyance.** Each Owner shall have the right to grant a mortgage, deed of trust, or other lien on his interest in the Property and Common Elements, and Common Furnishings, provided that such mortgage, deed of trust, or lien shall not affect the interests of the other Owners. Any Owner may convey his interests in the Property at any time, provided that such Owner shall remain liable for all the Obligations of an Owner's interest in the Property incurred during his ownership. Such conveyance shall operate to transfer to the new Owner the interest of the prior Owner in funds held as reserves by the Manager and in Common furnishings without further instrument of transfer.

14. **Enforcement of Restrictions.** In the event that any Owner should fail to comply with any of the provisions of this Declaration, the Managing Agent or Board, on behalf of the non-defaulting Owners, or another Owner or Owners may bring an action for damages or to enjoin the violation or specifically enforce the provisions of this Declaration or to enforce any statutory or contractual lien or lien provided herein, including foreclosure of any such lien and/or the appointment of a receiver for the interest of any Owner. The costs incurred by such receiver shall be chargeable against the interest of such owner and such charge may be evidenced by a lien in favor of the Association, Managing Agent or other Owners. Such costs shall also be a personal obligation of the defaulting Owner. All sums payable hereunder by any Owner shall bear interest at the rate of twenty-four percent (24%) per annum or the maximum rate permitted by law, whichever is less, from the due date or, if advanced or incurred by any other Owner or by the Managing Agent and provided herein to be repaid, from the date repayment is required.

The remedies provided in this Declaration shall be cumulative and in addition to all other remedies which may be available at law or in equity; provided, however, that no breach of any provision hereof by any Owner or by the Managing Agent or failure of any Owner or Managing Agent to comply with any provision hereof shall permit or empower any other Owner to excuse any such breach or failure, and each Owner shall continue to perform and comply with and hold his interest in the Property subject to all of the provisions of this Declaration notwithstanding any such breach or failure.

BOOK 660 PAGE 710

15. **Waiver of Partition.** No owner or other person or entity acquiring any rights, title, or interest in any Property shall seek or obtain judicial partition of any Property or sale in lieu of partition. If, however, any Owner consists of two or more persons as tenants in common or as joint tenants, nothing contained herein shall prohibit a judicial sale of such Owner's undivided interest in lieu of partition as between such cotenants or joint owners.

16. **Amendment or Revocation.** All of the Owners of the Property may amend or revoke this Declaration upon the written approval of all the Owners of the Property and of each holder of a recorded first mortgage on each quarter interest in the Property. Written approval of the Managing Agent for such amendment or revocation shall be required if all assessments with respect to the property have not been paid in full and the Managing Agent has not been reimbursed for any other expenses it has incurred or become liable to pay with respect to the Property.

17. **Liability of Managing Agent.** Managing Agent shall have no liability to make any payment required or permitted to be made by it hereunder except to the extent that it has previously received funds from the Owners that have not been expended in accordance with the provisions of this Declaration; provided, however, Managing Agent may make any such payment on behalf of the Owners in its sole discretion, in which event Owners shall reimburse it. Managing Agent may terminate its obligation to act as Managing Agent hereunder at anytime upon thirty (30) days prior written notice to Owners or to the Association Board of Directors.

18. **Protection of Interests.** No Owner shall permit his interest in the Property or Common Furnishings to be subject to any lien (other than the liens of current real property taxes and special district assessments), claim, or charge, the enforcement of which may result in a sale or threatened sale of the interest of any other Owner in the Property or Common Furnishings or in any interference with the use or enjoyment thereof by any other Owner. In the event that the sale of the Property or Common Furnishings or the interest of any Owner be threatened by reason of any lien, claim, or charge against the interest of any other Owner, or proceedings be instituted to effect any such sale or interference, any Owner or Owners acting on his or their own behalf or through the Managing Agent or the Managing Agent acting on behalf of any one or more Owners, unless promptly indemnified to his or their satisfaction, may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in that event, the Owner whose interest was subject to such lien, claim or charge shall forthwith repay the amount so paid or expended to the

BOOK 660 PAGE 711

Owner, or Owners, or Managing Agent, whomsoever shall have paid or compromised the lien, claim, or charge, together with such reasonable attorney's fees and related costs as he or they may have incurred, plus interest thereon at 24% per year or the maximum legal rate, whichever is less.

19. Title. A 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.

20. Certain Work Prohibited.

A. No Owner shall undertake any work to the property nor shall any Owner enclose, by means of screening or otherwise, any balcony, yard, deck, patio or porch without having first obtained the prior written approval of the Board (which approval may be withheld for any reason) for such work and with respect to the materials, plans, and specifications for such work. Structural alterations shall not be made by an Owner to the exterior portions of the Property or to the Property or in the water, gas, or steam pipes, electric conduits, plumbing, or other fixtures connected therewith, nor shall an Owner remove any additions, improvements, or fixtures from the Property without the prior written approval of the Board (which approval may be withheld for any reason) first having been obtained.

B. Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from the claim of any lien against the interest of the Owner or against the Property, or any part thereof, for labor performed or for materials furnished in work for such Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner for whom the labor was performed or materials furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonably attorney's fees. If not promptly paid, the Association may proceed to collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

21. Various Rights and Easements.

A. Easements in Units for Repair, Maintenance, and Emergencies. The Association, Board, and Managing Agent and each Owner shall have an easement, which may be exercised for any Owner, by the Association, the Board, or the Managing Agent, as his agent, for access during any Period of Use from time to time, during such reasonable hours as may be necessary for the maintenance or repair or for making emergency repairs therein necessary to prevent damage. Damage to the interior or any part of the Property resulting from the maintenance, repair, emergency

repair, or replacement at the instance of the Association, the Board, or the Managing Agent shall be a Common Expense of all 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, unless a majority of the Owners or the Board of Directors of the Association authorizes a charge.

B. **Emergency Easement.** A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon all streets, roads, and driveways located in the Property, and upon the Property, in the performance of their duties.

22. **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, the Articles, Bylaws, decisions, rules, regulations and resolutions of the Association. Failure to comply with any of the same shall be ground 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 Managing Agent or Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

23. **Certain Rights and Obligations of the Association.**

A. **Association as Attorney-in-Fact for Owners.** The Association is hereby irrevocably appointed as the attorney-in-fact for the Owners, and each of them, to manage, control, and deal with the interest of each Owner in the Property so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Property upon its destruction or obsolescence as hereinafter provided. The acceptance by any Person or any interest in any Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer, and regulate the Property and to perform all of the duties required of it. Notwithstanding the above, but subject to the provisions of Paragraph 8, 24, 25, and 26 (B) hereof, unless all of the Owners and all of the holders of first mortgages or deeds of trust encumbering each ownership interest have given their prior written approval, the Owners, Managing Agent or Association shall not be empowered or entitled to:

(1) by act or omission, seek to abandon or terminate the Property;

(2) change the percent of responsibility, pro rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(3) 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 Property) any interest in the Property;

(4) use hazard insurance proceeds for loss to the Property for other than repair, replacement, or reconstruction thereof; or

(5) otherwise modify the terms of this Declaration.

B. Property. The Association shall provide for the care, operation, management, maintenance, repair, and replacement of the Property. Without limiting the generality of the foregoing, said obligations shall include the keeping of the Property in good, clean, attractive, and sanitary condition, order, and repair; removing snow and any other materials from the Property which might impair access to the Property; keeping the Property safe, attractive, and desirable; and making necessary or desirable alterations, additions, betterments, or improvements to or on the Property.

C. Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interest of all, some, or any Owners on a self-supporting, special assessment, or common assessment basis. Such activities, functions, or services may include the providing of police or similar security services, the providing of garbage and trash collection services, and the providing of maid and cleaning services.

D. Labor and Services. The Association (1) may obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or any Person with whom or which it contracts; (2) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration; and (3) may arrange with others to furnish lighting, heating,

BOOK 660 PAGE 714

water, trash collection, sewer service, and other common services.

E. **Mortgagee Information.** Upon the written request of any Mortgagee, such Mortgagee shall be entitled to receive the most recent annual financial statement of the Association and written notice of all meetings of the Association and such mortgagee shall have the right to designate a representative to attend any such meeting.

F. **Enforcement by Association.** The Board may suspend any Owner's voting rights in the Association or the right of an Owner to use the Property during any period or periods in 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 Association may also take judicial action against any Owner to enforce compliance with such rules, regulations, or other obligations herein or in the Bylaws contained or to obtain damages for non-compliance thereof, all to the extent permitted by law. In addition to any other remedy provided for in this Declaration, the Board may impose a fine, not to exceed \$50.00, on any Owner for each violation or act of non-compliance by any such Owner or his Guest.

G. **Certificate.** 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, together with the identity and address of the Managing Agent, if any there be. Such certificate shall be conclusive evidence thereof in favor of any Person relying thereon in good faith regardless of the time elapsed since the date thereof.

H. **Implied Rights.** 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.

24. Restrictive Covenants and Obligations.

A. **No Imperiling of Insurance.** No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on the Property which might result in an increase in the premiums of insurance obtained for the Property or which might cause cancellation of such insurance.

B. **No Violation of Law.** No Owner and no Owner's Guests shall do anything or keep anything in or on the Property 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.

BOOK 660 PAGE 715

C. **No Noxious, Offensive, Hazardous, or Annoying Activities.** No Noxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done or placed on or in any part of the Property 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 Property and no improvements shall be made or constructed on any part of the Property which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Property which is unreasonably loud or annoying. No odor shall be emitted on any part of the Property which is noxious or offensive to others. No light shall be emitted from any part of the Property which is unreasonably bright or causes unreasonable glare.

D. **No Unsightliness.** No unsightliness or waste shall be permitted on or in any part of the Property. 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 Property; nor shall any Owner hang, erect, affix, or place anything on or in windows or doors of the Property which would or might create an unsightly appearance.

E. **Restriction on Animals.** Except for one household pet which belongs to an Owner, no animals, livestock, reptiles, or birds shall be kept on any part of the Property by anyone. Each Owner shall be responsible to repair any damage or clean any mess caused to any part of the property by any household pets during that Owner's period of use.

F. **Restriction on Signs.** No signs or advertising devices of any nature shall be erected or maintained on any part of the Property without prior written consent of the Board. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify the Property. So long as any Unit owned by Declarant on the Property remains unsold, no Owner shall be permitted to place any sign on the Property advertising his Unit for sale, lease, or rent.

G. **Parking of Vehicles.** Parking of any and all vehicles on the Property shall be subject to the rules and regulations of the Association.

25. **Association as Attorney-in-Fact.** Damage Destruction and Obsolescence. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property upon its destruction, repair or obsolescence.

Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute

appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place, and stead for the purpose of dealing with the Property upon its destruction, repair, or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, lease, deed, or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the Property to substantially the same condition in which it existed prior to the damage. Except as is otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, or replacement unless all Owners and all mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

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

A. In the event of damage or destruction to the Property to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost thereof, not including land, due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s).

B. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement costs of the Property, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Units. Such deficiency assessment shall be a Common Expense and made pro rata according to each Owner's Percent of Responsibility and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided hereinbefore. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to

BOOK 660 PAGE 717

pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) for payment of taxes and special assessment liens in favor of any assessing public entity;
- (2) for payment of the balance of the lien of any first mortgage;
- (3) for payment of unpaid Common Expenses;
- (4) for payment of junior Mortgages and encumbrances in order of and to the extent of their priority; and,
- (5) the balance remaining, if any, shall be paid to the Owner.

C. If the Property is destroyed or damaged to the extent of more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost thereof, not including land, the Board shall adopt a plan for the repair and reconstruction of the Property, and all Owners shall be bound by the terms and provisions of such plan, unless the Owners representing an aggregate seventy-five percent (75%), or more, of the Percent of Responsibility, and at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each mortgage owned) vote not to adopt such plan within one hundred (100) days after the damage or destruction. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance for repair of such destruction or damages, as well as the proceeds of an assessment to be made against all of the Owners and their Units. Any assessment made in connection with such plan shall be a Common Expense and made pro rata according to each Owner's percentage interest in the Property and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided hereinabove. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice refusing or

BOOK 660 PAGE 718

failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs B(1) through (5) of this paragraph.

D. If the Property is damaged or destroyed to the extent of more than sixty-six and two-thirds ($66 \frac{2}{3}$) of the total replacement cost thereof, not including land, and if the Owners representing an aggregate interest of seventy-five percent (75%) or more, of the Percent of Responsibility and at least seventy-five percent (75%) of the Mortgagees vote not to adopt a plan for repair and reconstruction, then the Association shall forthwith record a notice setting forth such fact or facts, upon the recording of such notice by the Association's president and secretary, the Property 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 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 on the policy of policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amounts of the proceeds derived from the sale of the Property. Such apportionment shall be based upon each Owner's Percentage of Responsibility. 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 subparagraph B(1) through (5) of this paragraph. The provisions contained in this subparagraph shall not hinder the protection given to a mortgagee under a mortgage endorsement.

E. The Owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the Percent of Responsibility may agree that the Units are obsolete and adopt a plan for the renewal and reconstruction, which plan shall have the approval or consent of at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each Mortgage owned). If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, then the expenses thereof shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the adoption of such plan that his or its Unit shall be purchased by the Association

BOOK 660 PAGE 719

for the fair market value thereof. The Association shall then have fifteen (15) days within which to cancel such plan. If such plan is not cancelled then the Unit shall be purchased by the Association according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notified the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned in this subparagraph shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If either party fails to make such a nomination, the appraiser nominated shall within five (5) days after default by the other party appoint and associate with him another independent appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another independent appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two independent appraisers and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Colorado and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure to the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraph B(1) through (5) of this paragraph.

F. The Owners representing an aggregate of seventy-five percent (75%), or more, of the Percent of Responsibility may agree that the Property is obsolete and that the same should be sold. Such plan (agreement) must have the unanimous approval or consent of every first Mortgagee. 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 Property 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 Articles, and Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's Percent of Responsibility, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall be in the name of the Association, and shall be

BOOK 660 PAGE 720

further identified by the 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 B(1) through (5) of this paragraph.

26. Condemnation.

A. **Consequences of Condemnation.** If at any time or times during the continuance of ownership pursuant to this Declaration, all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Paragraph 26 shall apply.

B. **Application of Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable as follows:

(1) payment of any mortgage as provided in mortgages, deeds of trust, or other encumbrances according to the terms thereof and in the order of their priority;

(2) the remainder, if any, to the Unit Owner.

C. **Effect of Provisions of Declaration.** Each provision of this Declaration, and with an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right, or interest to effectuate any provision of this Declaration shall:

(1) be deemed incorporated in each deed, lease, or other instrument by which any right, title, or interest in the Property or in any Unit is granted, devised, or conveyed, whether or not set forth or referred to in such deed or instrument;

(2) by virtue of acceptance of any right, title, or interest in the Property or in any Unit by an Owner, be deemed accepted, ratified, adopted, and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors, and assigns and shall be deemed a personal covenant to, with, and for the benefit of the Association but not to, with, or for the benefit of any other non-aggrieved Owner;

(3) be deemed a real covenant by Declarant, for itself, its successors, and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the

title to the Property and each Unit and, as a real covenant and also as an equitable servitude for the benefit of the Property and each Unit; and

(4) be deemed a covenant, obligation, and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Property and each Unit in favor of the Association.

27. Right of First Refusal.

A. Offer of Purchase or Lease. No Owner, including Declarant, may sell or lease such Owner's interest except pursuant to the provisions of this Paragraph 27. Any Owner who receives a bona fide offer for the purchase or lease of his interest, which he intends to accept, shall give prompt written notice to the Association of such offer and of such intention, the name and address of the proposed purchaser or lessee, the terms of the proposed transaction, and such other information as the Association may reasonably require, and such Owner shall thereupon offer to sell or to lease his interest through the agency of the Association, to all other Owners, whether one or more of them, on the same terms and conditions as contained in the bona fide offer. The giving of notice shall constitute a warranty and representation to the Association for the benefit of the remaining Owners, that such Owner believes the offer to be bona fide in all respects.

B. Notice to Remaining Owners. Within five (5) business days after the receipt of notice of a bona fide offer, the Association shall mail by regular United States mail, postage prepaid, to each Owner the information as to the bona fide offer to purchase or lease. For a period of ten (10) days beginning on and including the date of the actual mailing of such information, the other Owners shall have the right to purchase or to lease the subject interest on the same terms and conditions as contained in the bona fide offer.

C. Exercise of Right. In order to exercise the right of first refusal, the Owners, whether one or more of them, must on or before the end of such ten-day period, actually deliver to the Association a written commitment or commitments to purchase or lease the subject interest. If only one Owner shall submit a written commitment, then such Owner shall be deemed to have the sole right to acquire the offered interest by lease or purchase, pursuant to the terms of the bona fide offer. If more than one written commitment is delivered, the Association shall give immediate notice by telephone or telegram to all Owners who delivered such written commitment of the fact of multiple commitments. For a period of three (3) days beginning on and including the day of telephone or telegram notice, the Owners who submitted the multiple commitments may agree among themselves as

to a form of undivided ownership and procedure for purchase or lease of the offered interest. Notice of such agreement shall be delivered to or received by the Association in writing within the three (3) day time period. If no such agreement is delivered to or received by the Association, then the Association shall promptly conduct a drawing between the Owners who submitted the multiple commitments to determine priority as between them and the priority so determined shall be conclusive. The Owner or Owners who shall have validly exercised the right hereunder shall enter into a contract with the offering Owner to purchase or lease the offered interest upon the same terms and conditions as contained in the bona fide offer, or upon terms and conditions no less favorable to the offering Owner, and tender to the offering Owner any down payment or deposit theretofore made under the bona fide offer.

D. **Non-exercise of Right.** If no Owner shall exercise his right hereunder within the time period provided, the offering Owner shall be free to accept and close upon the basis of the bona fide offer with the person or persons who made the bona fide offer. If the offering Owner shall not within the period provided in the bona fide offer close the transaction on the terms and conditions as originally contained therein, then the offering Owner shall be required to again comply with all of the terms and provisions of this Paragraph 27 in order to subsequently sell or lease the interest.

E. **Failure to Comply.** Any sale or lease of an interest without full compliance with the terms and provisions of this Paragraph 27 shall be voidable at the election of the Association.

F. **Certificate.** After full compliance by an offering Owner with this Paragraph 27, and after all periods of time provided for purchase by remaining Owners have expired and the right of first refusal has not been exercised, then the Association shall execute a certificate in recordable form stating that the provisions of this Paragraph 27, have been complied with and that any right of first refusal theretofore vested in the remaining Owners have terminated. Such certificate may be signed by any member of the Board of Managers of the Association and shall be conclusive upon the Association and the remaining Owners in favor of all persons who rely thereon in good faith.

G. **Exceptions.** The following transfers or conveyances of interest are expressly excepted from the provisions of this Paragraph 27:

(1) A transfer to or purchase by any mortgagee which acquires its title as a result of foreclosure proceedings or conveyance in lieu thereof; and a transfer, sale or lease by

BOOK 660 PAGE 723

any such mortgagee after acquisition of the interest by foreclosure or conveyance in lieu thereof;

(2) A transfer, conveyance or lease between or among Owners, whether of separate interests or co-tenants of the same interest;

(3) A transfer or conveyance by gift, devise or inheritance or by operation of law; or

(4) A short-term lease of less than eight (8) weeks in any calendar year.

28. Miscellaneous.

A. **Protection of Encumbrancer.** 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 Mortgage, or other lien on any Unit taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of the County of Gunnison, Colorado, prior to the time of recording in said office of an instrument describing the Unit and listing the name or names of the Owner or Owners of title to the 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 Mortgage or other lien or the title or interest acquired by any purchaser upon foreclosure of any such 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 or breaches of, or failure to comply with, any provisions of this Declaration which occurred prior to the vesting of 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.

B. **Number and Genders.** 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.

C. **Registration by Owner of Mailing Address.** Each Owner shall register his mailing address with the Association and, except for monthly statements and other routine notices which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the

The foregoing instrument was acknowledged before me this 24 day of October, 1988, by Sandra I. Cook.

Ruth E. Alford
Notary Public

My commission expires: 10-24-91

Address: 4025 Thunderbird Ln.
Oklahoma City, OK 73120



Exhibit "2"

- A - Owner A
- B - Owner B
- C - Owner C
- D - Owner D
- M - Maintenance

Week Number	1986	Year 1 1987	Year 2 1988	Year 3 1989	Year 4 1990
1		O Jan 3 - Jan 7	D Jan 6 - Jan 12	A Jan 5 - Jan 12	B Jan 4 - Jan 11
2		O Jan 7 - Jan 14	A Jan 13 - Jan 20	A Jan 12 - Jan 19	C Jan 11 - Jan 18
3		A Jan 14 - Jan 21	A Jan 20 - Jan 27	B Jan 19 - Jan 26	D Jan 18 - Jan 25
4		D Jan 21 - Jan 28	B Jan 27 - Feb 3	C Jan 26 - Feb 2	A Jan 25 - Feb 1
5		A Jan 28 - Feb 4	B Feb 3 - Feb 10	C Feb 2 - Feb 9	D Jan 28 - Feb 4
6		A Feb 4 - Feb 11	C Feb 10 - Feb 17	D Feb 9 - Feb 16	A Feb 5 - Feb 12
7		B Feb 11 - Feb 18	C Feb 17 - Feb 24	D Feb 16 - Feb 23	A Feb 12 - Feb 19
8		B Feb 18 - Feb 25	D Feb 24 - Mar 2	A Feb 23 - Mar 1	B Feb 19 - Feb 26
9		C Feb 25 - Mar 4	D Mar 2 - Mar 10	A Mar 1 - Mar 8	C Feb 26 - Mar 5
10		C Mar 4 - Mar 11	A Mar 10 - Mar 17	B Mar 8 - Mar 15	D Mar 5 - Mar 12
11		D Mar 11 - Mar 18	B Mar 17 - Mar 24	C Mar 15 - Mar 22	A Mar 12 - Mar 19
12		D Mar 18 - Mar 25	C Mar 24 - Mar 31	D Mar 22 - Mar 29	B Mar 19 - Mar 26
13		A Mar 25 - Apr 1	C Mar 31 - Apr 7	A Mar 30 - Apr 6	C Mar 26 - Mar 33
14		B Apr 1 - Apr 8	D Apr 7 - Apr 14	A Apr 6 - Apr 13	D Mar 33 - Apr 3
15		C Apr 8 - Apr 15	A Apr 14 - Apr 21	B Apr 13 - Apr 20	A Apr 3 - Apr 10
16		D Apr 15 - Apr 22	A Apr 21 - Apr 28	C Apr 20 - Apr 27	B Apr 10 - Apr 17
17		O Apr 22 - Apr 29	B Apr 28 - May 5	D Apr 27 - May 4	C Apr 17 - Apr 24
18		O Apr 29 - May 6	M May 5 - May 12	C May 4 - May 11	D Apr 24 - May 1
19		A May 6 - May 13	M May 12 - May 19	D May 11 - May 18	A May 1 - May 8
20		H May 13 - May 20	C May 19 - May 26	M May 18 - May 25	B May 8 - May 15
21		B May 20 - May 27	D May 26 - June 2	D May 25 - June 1	C May 15 - May 22
22		C May 27 - June 3	D June 2 - June 9	A May 29 - June 5	D May 22 - May 29
23		C June 3 - June 10	A June 9 - June 16	B June 5 - June 12	A May 29 - June 5
24		D June 10 - June 17	A June 16 - June 23	C June 12 - June 19	B June 5 - June 12
25		O June 17 - June 24	B June 23 - June 30	D June 19 - June 26	C June 12 - June 19
26		A June 24 - July 1	B June 30 - July 7	C June 26 - July 3	D June 19 - June 26
27		A July 1 - July 8	C July 7 - July 14	D July 3 - July 10	A June 26 - July 3
28		B July 8 - July 15	D July 14 - July 21	A July 10 - July 17	B June 26 - July 3
29		B July 15 - July 22	D July 21 - July 28	B July 17 - July 24	C July 3 - July 10
30		C July 22 - July 29	D July 28 - Aug 4	A July 24 - Aug 1	D July 10 - July 17
31		C July 29 - Aug 5	A Aug 4 - Aug 11	B July 27 - Aug 3	A July 17 - July 24
32		D Aug 5 - Aug 12	A Aug 11 - Aug 18	C Aug 3 - Aug 10	B July 24 - Aug 1
33		D Aug 12 - Aug 19	B Aug 18 - Aug 25	D Aug 10 - Aug 17	C Aug 1 - Aug 8
34		A Aug 19 - Aug 26	B Aug 25 - Sep 1	C Aug 17 - Aug 24	D Aug 8 - Aug 15
35		A Aug 26 - Sep 2	C Sep 1 - Sep 8	D Aug 24 - Aug 31	A Aug 15 - Aug 22
36		B Sep 2 - Sep 9	C Sep 8 - Sep 15	O Aug 31 - Sep 7	D Aug 22 - Aug 29
37		B Sep 9 - Sep 16	C Sep 15 - Sep 22	D Sep 7 - Sep 14	A Aug 29 - Sep 5
38		C Sep 16 - Sep 23	D Sep 22 - Sep 29	A Sep 14 - Sep 21	B Sep 5 - Sep 12
39		C Sep 23 - Sep 30	U Sep 29 - Oct 6	A Sep 21 - Sep 28	C Sep 12 - Sep 19
40		D Sep 30 - Oct 7	A Oct 6 - Oct 13	B Sep 28 - Oct 5	D Sep 19 - Sep 26
41	A Oct 1 - Oct 8	D Oct 7 - Oct 14	B Oct 13 - Oct 20	C Oct 5 - Oct 12	A Sep 26 - Oct 3
42	B Oct 8 - Oct 15	A Oct 14 - Oct 21	C Oct 20 - Oct 27	D Oct 12 - Oct 19	B Oct 3 - Oct 10
43	C Oct 15 - Oct 22	A Oct 21 - Oct 28	B Oct 27 - Nov 3	C Oct 19 - Oct 26	C Oct 10 - Oct 17
44	D Oct 22 - Oct 29	B Oct 28 - Nov 4	C Oct 27 - Nov 3	D Oct 26 - Nov 2	D Oct 17 - Oct 24
45	A Oct 29 - Nov 5	B Nov 4 - Nov 11	C Nov 3 - Nov 10	A Oct 26 - Nov 2	A Oct 24 - Oct 31
46	H Nov 5 - Nov 12	M Nov 11 - Nov 18	M Nov 10 - Nov 17	D Nov 2 - Nov 9	B Oct 31 - Nov 7
47	A Nov 12 - Nov 19	C Nov 18 - Nov 25	B Nov 17 - Nov 24	H Nov 9 - Nov 16	M Nov 7 - Nov 14
48	B Nov 19 - Nov 26	B Nov 25 - Dec 2	F Nov 24 - Dec 1	D Nov 16 - Nov 23	A Nov 14 - Nov 21
49	B Nov 26 - Dec 3	B Dec 2 - Dec 9	D Dec 1 - Dec 8	D Nov 23 - Nov 30	B Nov 21 - Nov 28
50	C Dec 3 - Dec 10	D Dec 9 - Dec 16	D Dec 8 - Dec 15	A Nov 30 - Dec 7	A Nov 28 - Dec 5
51	D Dec 10 - Dec 17	A Dec 16 - Dec 23	C Dec 15 - Dec 22	C Dec 7 - Dec 14	C Nov 28 - Dec 5
52	D Dec 17 - Dec 24	A Dec 23 - Dec 30	C Dec 22 - Dec 29	B Dec 14 - Dec 21	D Dec 5 - Dec 12
53	B Dec 24 - Dec 31	D Dec 30 - Jan 6	A Dec 29 - Jan 5	C Dec 21 - Dec 28	C Dec 12 - Dec 19
					D Dec 19 - Dec 26
					B Dec 26 - Jan 2