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## **TWIN RIVERS CONDOMINIUMS**

### **SECOND SUPPLEMENTAL AND RESTATED DECLARATION**

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This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration", is made and executed in Grand County, Colorado, this 27th day of February, 1981, by TWIN RIVERS DEVELOPMENT COMPANY, a Colorado Limited Partnership, hereinafter called "Declarant", pursuant to the provisions of the Colorado "Condominium Ownership Act" as amended:

RECITALS:

WHEREAS, a Condominium Declaration was recorded for TWIN RIVERS CONDOMINIUMS (a/k/a TWIN RIVERS CONDOMINIUM DEVELOPMENT COMPANY) at Book 265, Page 74 of the Grand County records;

WHEREAS, the aforesaid Declarations were amended and supplemented by documents recorded at Book 274, Page 288 and at Book 277, Page 580 of the Grand County records;

WHEREAS, said Declarations as amended permit further Amendment thereof upon approval of (1) all the Holders of any first mortgage or deed of trust covering or affecting any or all of the Condominium Units in the Project and (2) the Owners representing an aggregate ownership interest of SEVENTY - FIVE PERCENT (75%) or more of the General Common Elements in the Condominium Project;

WHEREAS, the Declarant, TWIN RIVERS CONDOMINIUM DEVELOPMENT COMPANY, a Colorado Limited Partnership, is the owner of SEVENTY - FIVE PERCENT (75%) or more of the General Common Elements of the Project;

WHEREAS, the undersigned first mortgage or deed of trust Holders constitute all of the Holders of the first mortgages or deeds of trust covering or affecting the Project or units thereof;

WHEREAS, it is the desire of the undersigned to amend the prior Declarations and Amendments thereto, so that the below stated Declaration supersedes all prior Declarations and re-states in their entirety the Declaration which shall henceforth encumber the real property described herein.

NOW THEREFORE, pursuant to said Declarations and the Colorado Condominium Ownership Act, the Declarant and parties signed hereunder do hereby amend the aforesaid Declarations to read in their entirety as follows:

**ARTICLE 1: DEFINITIONS.** Unless the context shall expressly provide otherwise:

1.1 "Declarant" means TWIN RIVERS CONDOMINIUM DEVELOPMENT CO, a Colorado Limited Partnership (sometimes referred to as "TWIN RIVERS"), which WINTER PARK PTAR MIGAN, INC., a Colorado corporation (or its successor) is the General Partner.

1.2 "County" means County of Grand, Colorado.

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- 1.3 "Condominium Map" means the Condominium Map as amended of TWIN RIVERS CONDOMINIUMS filed for record in the office of the County Clerk and Recorder of Grand County.
- 1.4 "Unit" means an individual air space which is contained within the perimeter walls, floors, ceilings, windows and doors of a Unit, or other boundary situated on the Real Property, and as shown and described on a Condominium Map recorded in the real property records of Grand County, Colorado, together with (a) all fixtures and improvements therein, except for common physical utility facilities; (b) the inner decorated or finished surfaces of such Unit's perimeter walls, floors and ceilings; and (c) the interior non-supporting walls within the Unit. The term does not include, however, the undecorated or unfinished surfaces of the perimeter walls, floors or ceilings of a Unit, any utility facilities running through the Unit that serve more than one Unit, or any other Common Element or part thereof located within the Unit.
- 1.5 "General Common Elements" mean all of the Project except the portions thereof which are Units, all the real property and improvements thereon which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of a Building or any Unit therein, including but not limited to the following:
  - A. All foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, patios, balconies, decks, basements (except garage areas), sidewalks, parking and driveways of a building(s) on the real property.
  - B. The exterior walls, the main or bearing walls, the main or bearing subflooring and the roofs of a Building(s) on the real property.
  - C. All common entrances, exits, halls, corridors, lobbies, basements, elevators, stairs, stairways and lounges.
  - D. All utility, service and maintenance rooms, recreational facilities, space, fixtures, apparatus, installations and facilities for power, light, gas, telephone, television, hot water, cold water, heating, refrigeration, air conditioning, incineration, or similar utility service or maintenance purposes, provided they do not exist solely to serve a Unit in which they may be located, including furnaces, tanks, pumps, motors, fans, compressors, vents, ducts, flues, wires, pipes, conduits and other similar fixtures, apparatus, installations, and facilities.
  - E. The air space above the property.

All improvements other than the Units, as defined, are a part of the General Common Elements, except as is otherwise provided in this Declaration.

All of said General Common Elements shall be owned, as tenants-in-common, by the Owners of the separate Units, each Owner of a Unit having an undivided percentage interest in such General Common Elements as provided hereinafter.

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- 1.6 "Condominium Unit" means the fee simple interest and title in and to a Unit together with the undivided interest in and to the General Common Elements appurtenant thereto and the exclusive right to use any Limited Common Element assigned thereto on the Condominium Map as designated by paragraph 2.3 of this Declaration.
- 1.7 "Limited Common Elements" means those parts of the General Common Elements which are either limited to and reserved for the exclusive use of an Owner of a Condominium Unit or are limited to and reserved for the common use of more than one, but fewer than all of the Condominium Unit Owners, which shall include by way of illustration and not limitation, patios, balconies, decks, garages, certain parking spaces and storage lockers which are specifically designated as being part of a particular Condominium Unit, as described, and located by legend symbol or words on the Condominium Map originally and as the Map may be supplemented.
- 1.8 "Mortgagee" means any person or entity who is a Mortgagee under a mortgage or a Beneficiary under a deed of trust or similar security instrument encumbering a Condominium Unit. "First Mortgagee" means the Mortgagee or Beneficiary under a deed of trust which is the first and most senior of all mortgages and deeds of trust encumbering a Condominium Unit
- 1.9 "Association" or "Association of Unit Owners" means TWIN RIVERS OWNERS ASSOCIATION, A COLORADO CORPORATION, not for profit, its successors and assigns, the Articles of Incorporation and By-Laws of which, together with this Declaration shall govern the administration of this Condominium Project, the members of which shall be all of the Owners of the Condominium Units.
- 1.10 "Assessments" are as defined in Article 6 hereof.
- 1.11 "Owner" means a person, firm, corporation, partnership, cooperative association, association or other legal entity, or any combination thereof, who own(s) one or more Condominium Units and specifically includes an Interval Owner, as hereinafter defined.
- 1.12 "Common Elements" means and includes all items defined as General Common Elements and Limited Common Elements.
- 1.13 "Condominium Project" or "Project" means all of the property and improvements submitted to this Declaration.
- 1.14 "Common Expenses" means and includes expenses of administration, operation and management of the condominium Project, and the expenses of maintenance, repair or replacement of the General Common Elements and all other expenses declared Common Expenses by provisions of this Declaration and the By-Laws of the Association.
- 1.15 PLAN OF INTERVAL OWNERSHIP. Declarant reserves the right for itself or Winter Park Resort Condo's, Ltd., a Colorado Limited Partnership, its successors and assigns, to submit all or some of the Condominium Units in the Project to the Plan of Interval Ownership as set forth in Paragraph 12. The provisions of Article 12 relate only to those Condominium Units submitted to the Plan of Interval Ownership and shall govern the Ownership of Interval Estates in said

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Condominium Units and the rights, duties and obligations of Interval Owners for so long as a Condominium Unit remains an Interval Unit. The right to submit a Condominium Unit to the Plan of Interval Ownership shall extend only to the Declarant, its successors or assigns, and Winter Park Resort Condo's, Ltd., its successors and assigns, and shall specifically not be available to purchasers of Condominium Units in the Project, their successors and assigns, other than Winter Park Resort Condo's Ltd. Submission of a Condominium Unit to a Plan of Interval Ownership shall be subject to the prior written consent of any first Mortgagee or any Holder of a first Deed of Trust of record.

The following definitions apply to those Condominium Units which are submitted to and sold under the plan of Interval Ownership set forth in Article 11 hereof:"

- A. "Interval Estate" means a time-span estate consisting of an undivided interest as tenant-in-common in the present estate in fee simple in a Condominium Unit during an annual recurring period of time, "Interval Week" defined in paragraph 1.15 F below.
- B. "Interval Owner" means a person vested with legal title to an Interval Estate during his designated Interval Week.
- C. "Interval Unit" means a Condominium Unit which is divided into Interval Weeks pursuant to Article 11 of this Declaration.
- D. "Maintenance Week" means those Interval Weeks designated by Declarant as Maintenance Weeks which are to be conveyed to the Interval Owners' Association by Declarant, during which period the Interval Owners' Association or Managing Agent, shall service, clear, repair, maintain and refurbish the Interval Unit.
- E. "Interval Unit Maintenance Fee" means the fee paid by the Interval Owners as more specifically set forth in Article 11 hereof.
- F. "Interval Week" means a period of exclusive possession and occupancy of an Interval Unit. Interval Weeks are computed as follows:

"Interval Week No. 1 is the seven (7) days commencing at noon the first Friday in each year. Unit Week No. 2 is the seven (7) days next succeeding Unit Week No. 1. Additional Unit Weeks consecutively numbered occupy each of the following successive seven (7) day period up to and including week No. 51. Week No. 52 contains the seven (7) day period immediately following the end of Unit Week No. 51 plus, Week No. 52 shall include any other days prior to the beginning of Week No. 1 regardless of the month or the year. Unit Weeks run from noon on the first Friday of the Interval to noon on the last day of the Interval, provided however, that the right of possession and occupancy shall not commence until 6:00 P.M. local time on the first Friday of the interval and shall end at 10:00 A.M. local time on the last day of the interval.

- G. "Interval Owners' Association" means the TWIN RIVERS INTERVAL OWNERS ASSOCIATION, A COLORADO CORPORATION, not for profit, its successors and

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assigns, the Articles of Incorporation and By—Laws of which, together with this Declaration, shall govern the administration of Interval Units in this project, the members of which shall be all of the Interval Owners.

## **ARTICLE 2: CONDOMINIUM UNITS**

2.1 DIVISION INTO CONDOMINIUM UNITS. The real property described in Exhibit "A" and the improvements to be constructed thereon are hereby divided into the separate estates identified in Exhibit "B", each of which consists of (a) the Unit which shall be owned in fee simple and (b) the appurtenant undivided interest in and to the General Common Elements assigned to the Unit as set forth in Exhibit "B". The General Common Elements shall be held in common by the Owner thereof.

2.2 CONDOMINIUM MAP. The Map may be filed for record in whole or in parts or sections, from time to time, as the stages of construction of the Units and other improvements are substantially completed. Any section of the Map filed subsequent to the first of the initially filed Map shall be termed a supplement to such Map and the numerical sequence of such supplements shall be shown thereon. The Map or any part or section thereof depicting Units shall not be filed for record until the building in which the Units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically by a registered engineer, land surveyor or licensed architect. Each such Map shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the improvements both horizontally and vertically; the thickness of the common walls separating the Units; and the Unit designations and the Building symbol. The Map shall contain the certificate of a registered professional engineer, land surveyor or licensed architect, certifying that the Map substantially depicts the location of the horizontal and vertical measurements of the building(s), the Unit(s), the elevations of the unfinished floors and ceilings as constructed, the Unit and Building symbol and that such Map was prepared subsequent to substantial completion of the improvements. Declarant reserves the right to amend the Map, from time to time, to conform the same according to the actual location of any of the improvements and to establish, vacate and relocate easements, access roads and on-site parking areas. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration, without specific reference(s) thereto.

2.3 LIMITED COMMON ELEMENTS. A portion of the General Common Elements is reserved for the exclusive use of the individual Owners of the respective Units, and such areas are referred to as "Limited Common Elements". The Limited Common Elements so reserved shall be identified on the Condominium Map; provided, however, that any court, patio, balcony or deck which is accessible from, associated with and which adjoins a Unit and any other Limited Common Elements and any garage, storage space or facility bearing the same numerical designation as the Unit so identified on the Map, shall, without further reference thereto, be used in connection with such Unit to the exclusion of the use thereof by the other Owners of the General Common Elements, except by invitation.

2.4 DESCRIPTION OF A CONDOMINIUM UNIT.

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- A. A contract written prior to the filing for record of the Map and Declaration may legally describe a Condominium Unit by its identifying Unit number and building symbol followed by the words TWIN RIVERS CONDOMINIUMS with further reference to the Map and Declaration to be filed for record with the Clerk and Recorder of the County.
- B. Subsequent to the record filing of the Declaration and the Map, every contract, lease, assignment of lease, sublease, mortgage, deed of trust, encumbrance, deed or any other instrument may describe the Condominium Unit according to the following description, to wit:

Condominium Unit \_\_\_\_\_,  
\_\_\_\_\_ Building,  
TWIN RIVERS CONDOMINIUMS,  
According to the Maps thereof, filed for record, and according to the  
Condominium Declaration for Twin Rivers Condominiums, recorded  
\_\_\_\_\_, 1980, in Book \_\_\_\_\_ at Page \_\_\_\_\_.  
County of Grand,  
State of Colorado.

Parking space(s) or garage units, if any, which are specifically appurtenant to the Condominium Unit, shall be added to the description. In each instance, the identifying Unit designation (garage, if any, and parking space, if any) and the recording data of the Declaration shall be deemed to include and describe the entire Condominium Unit, including the appurtenant undivided interest in the General Common Elements, a non-exclusive easement for ingress and egress to and from an Owner's Unit, exclusive use of any Limited Common Element, and all of the other rights, easements, obligations, limitations, covenants and restrictions as provided in this Declaration. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit but also the General Common Elements and the Limited Common Elements appurtenant thereto. Each such description shall be construed to include the easements created in Article 3 hereof which shall be deemed to be appurtenant to the Condominium Units created hereby.

- 2.5 INSEPARABILITY OF A CONDOMINIUM UNIT. Each Unit, the appurtenant undivided interest in the General Common Elements and any appurtenant Limited Common Elements shall together comprise one Condominium Unit, shall be inseparable and may be conveyed, leased, demised, transferred, assigned, subleased or encumbered only as a Condominium Unit.
- 2.6 NON-PARTITIONABILITY OF GENERAL COMMON ELEMENTS AND REAL PROPERTY. The General Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements.
- 2.7 PARTITION OF A CONDOMINIUM UNIT PROHIBITED. No Owner shall, partition or subdivide any Condominium Unit so as to convey to a prospective Owner an interest in less than an entire Condominium Unit. This provision is not intended, however, to prohibit joint or common ownership by two or more persons or entities of a Condominium Unit.



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- 2.8 SEPARATE TAXATION OF CONDOMINIUM UNITS. All taxes, assessments and other charges of the County of Grand, State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Condominium Unit separately and not on a Building or the Project as a whole, and each Condominium Unit shall be carried on the tax records as a separated and distinct parcel. For the purpose of valuation for assessment, the valuation of the General Common Elements and the real property shall be apportioned among the Condominium Units in proportion to the interval or percentage undivided interest in the General Common Elements. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.
- 2.9 NOTTCE TO ASSESSOR. The Declarant shall deliver to the County Assessor a written notice as required by the Condominium Ownership Act of Colorado, setting forth descriptions of the Condominium Units, and shall furnish all necessary information with respect to the General Common Elements to complete apportionment for taxation and assessment as provided in paragraph 2.8.
- 2.10 MECHANIC'S LIENS. No labor performed or materials furnished for use in connection with any Condominium Unit with the consent or at the request of the owner thereof or his agent, contractor or subcontractor shall create any right to file statement or mechanic's lien against the Condominium Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the General Common Elements except the undivided interest therein appurtenant to the Condominium Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

Each Owner shall indemnify and hold harmless each of the other Owners from and against 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 Unit. At the written request of any Owner or any Mortgagee, the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which the labor was performed and materials furnished, the amount necessary to discharge any such lien, and all costs incidental thereto, including attorney's fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

### **ARTICLE 3: RIGHTS, EASEMENTS, AND OBLIGATIONS**

- 3.1 OWNER'S RIGHTS IN GENERAL COMMON ELEMENTS. Subject to the other provisions of the Declaration, each Owner shall have a non-exclusive right to use and enjoy the General Common Elements, consistent with the rights of use and enjoyment of other Owners. All of the Owners of Condominium Units in this Condominium Project shall have a non-exclusive right in common with all of the other Owners to the Use of sidewalks, pathways and driveways located within the entire Condominium Project. No reference to the General Common Elements need be made in any lease, sublease, deed, deed of trust, mortgage or other instrument.

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- 3.2 OWNER'S RIGHTS IN LIMITED COMMON ELEMENTS. Subject to the other provisions of the Declaration, each Owner shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on the Map as appurtenant and exclusive to the Condominium Unit owned by such Owner. No reference thereto, whether such Limited Common Elements are exclusive or non-exclusive need be made in any lease, sublease, deed, deed of trust, mortgage or other instrument.
- 3.3 OWNER'S RIGHTS IN UNIT. Subject to the other provisions of this Declaration, each Owner shall have full and complete dominion of his Unit, and each Owner shall have the exclusive right to use and enjoy the same.
- 3.4 OWNER'S MAINTENANCE RESPONSIBILITY FOR HIS UNIT.
- A. For maintenance purposes, an Owner shall be deemed to own and be obligated to keep in good repair and condition the non-supporting walls within his Unit, the materials such as, but not limited to, plaster, gypsum, dry wall, paneling, wallpaper, paint, wall and floor tile and flooring, but not including sub-flooring, which make up the furnished surfaces of the perimeter and interior walls, ceilings and floors within his Unit, including Unit doors and windows. The lines, pipes, wires, conduits or systems (which for brevity are herein and hereafter referred to as utilities) running through his Unit which serve one or more other Units are General Common Elements, and are not owned by the Unit Owner except through his interest in the General Common Elements. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board of Managers. An Owner's right to repair, alter and remodel the interior of his Unit shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality.
  - B. An Owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in good repair and condition by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Unit or the Building in which it is located or impair any easement or hereditament. An Owner shall always keep the Limited Common Elements appurtenant to his Unit in a clean and sanitary condition.
- 3.5 ASSOCIATION RIGHTS. The Association shall have a non-exclusive right and easement to make such use of General Common Elements, Limited Common Elements and Units as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.
- 3.6 OWNER'S EASEMENT FOR ACCESS, SUPPORT AND UTILITIES. Each Owner shall have a non-exclusive easement for access between his Unit and public roads and streets, over halls, corridors, stairs, elevators and walks, if any, and exterior access and other easements which are part of the General Common Elements. Each Owner shall have a non-exclusive easement in and over General Common Elements, including those that are within the Unit of another Owner, for horizontal and lateral support of the Unit which is part of his Condominium Unit and for utility service to that Unit, including water, sewer, gas, electricity, telephone and television

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### 3.7 EASEMENTS IN UNITS FOR REPAIR, MAINTENANCE AND EMERGENCIES.

- A. Some of the General Common Elements may be located within a Unit or may be conveniently accessible only through a Unit. The Association and each Owner shall have an easement, which may be exercised for any Owner by the Association 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; provided however, that such easement and right of access shall be immediate for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Unit. No diminution or abatement of Common Expenses Assessments shall be claimed or allowed for inconvenience or discomforts arising from the making of repairs and improvements or for action taken to comply with any law, ordinance or order of any governmental authority.
  
- B. Any 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 shall be a Common Expense of all of the Owners; provided however, that if such damage is caused by negligent or tortuous act of a Unit Owner, members of his family, his agent, employees, invitee, licensee or tenant, then such Unit Owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored substantially to the same condition in which they existed prior to the damage. All maintenance, repairs and replacements of the General Common Elements, whether located inside or outside of Units (unless necessitated by the negligence, misuse or tortuous act of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be the Common Expense of all of the Owners.

3.8 EASEMENTS FOR ENCROACHMENTS. 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 or the Limited Common Elements appurtenant thereto 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 the same. Such encroachments shall not be considered to be encumbrances either on the General Common Element or a Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of a Building, by error in the Condominium Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

3.9 EASEMENTS DEEMED APPURTENANT. The easements and rights herein created for an Owner shall be appurtenant to the Condominium Unit of that Owner and any transfer, assignment, sublease, mortgage or deed of trust and other instruments affecting the title to a Condominium Unit shall be deemed to grant and reserve the easements and right as are provided for herein, even though no specific reference to such easements appears in any such

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instrument.

#### **ARTICLE 4: THE ASSOCIATION**

4.1 GENERAL PURPOSES AND POWERS. The TWIN RIVERS OWNERS ASSOCIATION shall be formed and incorporated as a Colorado corporation, not for profit, to be and constitute the Association to which reference is made in this Declaration, to perform functions and hold and manage the General Common Elements as provided in this Declaration and to further the interests of Owners of Condominium Units in the Project. It shall have all powers necessary or desirable to effectuate such purposes. Subject to the provisions of this Declaration, the administration and management of the Association shall be governed by the Articles of Incorporation and Bylaws thereof. An Owner of a Condominium Unit, upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of his ownership.

4.2 REGULAR MEMBERSHIP. There shall be one membership in the Association for each Condominium Unit, which membership shall be appurtenant to each Condominium Unit. The Owner of a Condominium Unit shall automatically be the Owner of the membership appurtenant to that Condominium Unit, and title to and ownership of the membership for the Condominium Unit shall automatically pass with each transfer of a Condominium Unit. Each Owner of a Condominium Unit shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his Condominium Unit. If the interest in a Condominium Unit is held by more than one person or entity, the membership appurtenant to that Condominium Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of Ownership as the interest to the Condominium Unit is held. All entities other than individuals shall act with regard hereto by and through their Agents.

4.3 BOARD OF MANAGERS. The affairs of the Association shall be managed by a Board of Managers as is provided in the Articles of Incorporation and Bylaws of the Association. Both Owners of whole Units and Interval Owners shall always have at least one representative on the Board of Managers. Notwithstanding anything to the contrary provided herein, until all Condominium Units have been sold (meaning that title to said Condominium Units has been conveyed by the Declarant) or until December 31, 1985, whichever first occurs, the members of the Board of Managers shall be appointed by the Declarant and need not be Owners of Condominium Units. The Declarant shall have the option at any time to turn over control of the Board of Managers to the owners at any meeting of the Association called for such purpose.

The Board of Managers may by resolution delegate any of its duties, powers and functions to a person or firm which will act as Managing Agent. A portion of the General Common Elements including improvement thereon may be used by either the Association or both the Association and Managing Agent as and for their offices in connection with administration and management of the Association's duties.

4.4 VOTING OF OWNERS. Each Owner shall be entitled to cast votes based on the appurtenant

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percentage undivided interest in the General Common Elements assigned to his Unit. Voting by proxy shall be permitted.

- 4.5 NOTICES. Except as a greater period is specified in this Declaration, each Owner shall be entitled to not less than ten (10) but not more than thirty (30) days notice of any meeting at which such Owner has the right to vote. Notices of meetings shall be in writing and shall state the date, time, place and subject matter of the meeting which is known to the Association at the time notice of the meeting is given. Any notice shall be deemed given and any information or material shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material. Any notice, information or material shall be deemed properly addressed to an Owner if it is addressed to the name and address shown on the Association registered address form to be completed by such Owner and furnished to the Association or, if a name and address is not so furnished, if it is addressed to the "Owner" at the address of the Condominium Unit of such Owner.
- 4.6 RECORD DATE. The Board of Directors of the Association shall have the power to fix in advance, a date as a record date for the purpose of determining Owners entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Owners for any purpose. The Owners existing on any such record date shall be deemed the Owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of Owners is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which the notice of such meeting is first given to any Owner shall be deemed the record date for the meeting.
- 4.7 QUORUMS. Thirty-three and one-third percent (33 1/3%) of the votes entitled to vote on any matter present, in person or by proxy, at a meeting to consider a matter, or actually voting on the matter shall constitute a quorum for consideration of that matter. If a quorum is established for consideration of a matter, except as a greater percentage of votes is required under a specific provision of this Declaration, a majority of the votes cast on the matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.
- 4.8 ARTICLES OF INCORPORATION AND BY-LAWS. The purposes and powers of the Association and the rights and obligations with respect to Owners or memberships set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but no such provisions shall be, at any time, inconsistent with any provision of this Declaration.

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## **ARTICLE 5: RIGHTS, OBLIGATIONS, AND PROHIBITIONS OF THE ASSOCIATION.**

- 5.1 ASSOCIATION AS ATTORNEY-IN-FACT FOR OWNERS. The Association is hereby irrevocably appointed attorney-in-fact for the Owners of all Condominium Units and each of them to deal with the Project upon its damage, destruction, obsolescence or condemnation as hereinafter provided, and same shall constitute an appointment of the Association as an attorney-in-fact to deal with and handle insurance by any person or entity of any interest in any Condominium Unit.
- 5.2 GENERAL COMMON ELEMENT MAINTENANCE. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the General Common Elements. Without limiting the generality of the foregoing, said obligations shall include the keeping of such 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 to the Unit; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the General Common Elements. Limited Common Elements shall be maintained as General Common Elements, and Owners having exclusive use thereof shall not be subject to any special charges or Assessments for the repair or maintenance thereof except as is otherwise provided in this Declaration.
- 5.3 OTHER ASSOCIATION FUNCTIONS. The Association may undertake any activity, function or service for the benefit or to further the interests of all, some or any Owners of Condominium Units on a self-supporting, special Assessment or Common Expense basis. Such activities, functions or services may include the providing of police or similar security services, the providing of garbage and trash collection services, the providing of maid and cleaning service for individual Condominium Units, and the providing of check-in, mail and telephone answering service.
- 5.4 LABOR AND SERVICES. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services.
- 5.5 ASSOCIATION'S RIGHT TO ACQUIRE PROPERTY. The Association may acquire and hold, for the use and benefit of the Owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each Owner's guest(s) may use such property. Upon a termination of Condominium Ownership of the Project and dissolution of the Association, the beneficial interest in any such property shall be deemed to be owned by the then Owners in the same proportion as their respective interest in the General Common Elements. Transfer of a

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Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without the necessity of any specific reference thereto. The transfer of a Condominium Unit under foreclosure shall entitle the purchaser to the beneficial interest in such property.

5.6 RULES AND REGULATIONS. The Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of Units and of the General Common Elements. Such rules and regulations may, without limitation: (a) regulate use of the General and Limited Common Elements to assure equitable use and enjoyment by all persons entitled thereto, and (b) require that draperies, shades or other window coverings shall present a uniform and attractive appearance from the exterior of the building.

The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such 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 or to obtain damages for non-compliance, all to the extent permitted by law.

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

5.8 MORTGAGEE INSPECTION. The Association shall grant to each first Mortgagee of a Unit the right to examine the books and records of the Association at any reasonable time.

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

## **ARTICLE 6: ASSESSMENTS.**

6.1 REGULAR ASSESSMENTS. Each Owner shall be obligated to pay and shall pay to the Association, amounts assessed by the Board of Managers to the Condominium Unit of such Owner, which amounts are herein called Assessments. The apportionment of Assessments shall be made as provided in Article 6.3.

Subject to the provisions hereof, the Board of Managers of the Association shall have the power and authority to determine all matters in connection with Assessments, including power and authority to determine where, when and how assessments should be paid to the Association, and each Owner shall be required to comply with any such determinations.

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6.2 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the regular assessments, the Association may levy Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of the project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration.

6.3 APPORTIONMENT OF ASSESSMENTS. Assessments shall be apportioned according to the appurtenant percentage undivided interest in the General Common Elements assigned to a Unit.

6.4 DETERMINATION OF BUDGETS AND ASSESSMENTS. The total amount required to be raised by assessments shall be determined for each fiscal year of the Association by the Board of Managers of the Association. To determine the total amount required to be raised, the Board of Managers shall prepare an annual budget for the fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses which will be payable, any estimated income and other funds which will be received, and the estimated total amount required to be raised by assessments to cover costs and expenses and to provide any reasonable reserve. Declarant shall not be required to contribute to a reserve. The Board of Managers shall furnish a copy of the budget to any owner upon request.

The total amount required to be raised by assessments for any fiscal year, shall be that amount necessary to cover the costs and expenses of fulfilling the obligations of the Association made in connection with or contemplated under any previously approved budget. The total amount required to be raised by Assessments for any fiscal period less than a full fiscal year shall be the total amount required to be raised for the fiscal year determined as above and multiplied by a fraction, the numerator of which is the number of days in the fiscal period and the denominator of which is the number of days in that fiscal year. Any deficit, occurring or anticipated, shall be the subject of a special Assessment.

Except as emergencies may require, the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association.

6.5 TIME FOR PAYMENT. The amount of any Assessment, or other amount payable with respect to any Owner, shall become due and payable twenty (20) days after notice of such amount shall have been given by the Association to such Owner, or at such later time as may be specified by the Association. Any such amount shall bear interest at the highest rate permitted by law, not in excess of eighteen percent (18%) per annum from the date due and payable, to the date of the payment, together with a late charge as provided in the Association By-Laws.

6.6 LIEN FOR ASSESSMENTS AND OTHER AMOUNTS. The Association shall have a lien against each Condominium Unit to secure payment of any Assessment or other amount due and owing to the Association with respect to the owner of that Condominium Unit which lien shall be subordinated to the lien of any first mortgage on a Condominium Unit.

A. To evidence such lien, the Board of Managers or the Managing Agent, if any, shall prepare a written notice of lien Assessment setting forth the amount of such unpaid indebtedness,



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the amount of the accrued interest and late charges thereon, the name of the Owner of the Condominium Unit, and a description of the Condominium Unit. Such a notice of lien shall be signed by one of the Board of Managers or by one of the Officers of the Association, or by the Managing Agent on behalf of the Association, and shall be recorded in the office of the County Clerk and Recorder. Such lien shall attach and be effective from the actual due date of the Assessment until all sums, with interest and other charges thereon, shall have been fully paid.

- B. Such lien may be enforced by the foreclosure of the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property. In any such proceedings, the Owner shall be required to pay all costs, expenses, and attorney's fees incurred for filing the lien, and all additional costs and expenses including reasonable attorney's fees incurred to collect the Assessment. The Owner of the Condominium Unit being foreclosed shall be required to pay to the Association the monthly Common Assessment for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver during the foreclosure. The Association shall have the power to bid on the Condominium Unit at a foreclosure or other legal sale and to acquire and hold, lease, mortgage, sell, vote the votes appurtenant thereto or otherwise deal with the same.
- C. The recorded lien provided for herein may be released by recording a Release of Lien to be signed by an Officer of the Association or by the Managing Agent on behalf of the Association.

6.7 LIABILITY OF OWNERS, PURCHASERS AND ENCUMBRANCES. The amount of any Assessment payable with respect to any Owner shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns, provided however, that any Encumbrancer holding a lien on a Condominium Unit who acquired title to a Condominium Unit pursuant to any of the remedies set forth in its deed of trust for that Condominium Unit shall take said Unit free and clear of all unpaid assessments and any liens therefore and said Encumbrancer shall not be required to pay any Assessment with respect to such Unit but if such payment is made the encumbrancer shall have a lien on such Unit for all amounts paid. A party acquiring an interest in the Condominium Unit shall be jointly and severally liable with the former Owner for all such amounts which had accrued and were payable at the time of the acquisition of such interest by such party without prejudice to such party's right to recover any of said amounts paid from the former Owner.

Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. Notwithstanding the foregoing, the Holder of a first mortgage or first deed of trust on a Condominium Unit shall not be liable for any such Assessment, charge, fine or penalty, and the lien for any such Assessments, charges, fines or penalties shall be junior to any lien or encumbrance on a Condominium Unit taken in good faith and for value and perfected by recording in the office of the County Clerk and Recorder prior to the time a notice of such lien is recorded in said office. Any Mortgagee holding a lien on a Condominium Unit may pay, but shall not be required to pay, any unpaid Common Assessment payable with respect to such Unit, and upon such payment, such Encumbrancer shall have a lien on such Unit for the amount paid, of the same rank as the lien of his mortgage or encumbrance without the necessity of

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having to record a notice of claim of such lien. Upon request of a Mortgagee, the Association shall report to the Mortgagee of a Condominium Unit any unpaid Common Assessment or other charges remaining unpaid for longer than thirty days after the same is due; provided however, that a Mortgagee shall have furnished to the Association written notice of such encumbrance.

6.8 ESTOPPEL CERTIFICATE. Upon payment of a reasonable fee not to exceed fifty-dollars (\$50.00) and upon written request of any Owner or any person with any right, title or interest in a Condominium Unit or person intending to acquire any right, title or interest in a Condominium Unit (in which case the fee shall be paid by such prospective purchaser), the Association shall furnish a written statement setting forth the amount of all Assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner of the Condominium Unit and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Condominium Unit, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

#### 6.9 GENERAL.

- A. The omission or failure to fix the Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the Owner from his obligation to pay the Common Expense.
- B. Notwithstanding any provision to the contrary contained in this Declaration, during the period of sale by Declarant of the subject Condominium Units, the Assessments made against each Condominium Unit shall be based upon the actual expenses incurred. The estimated amount of the Assessments shall be billed monthly or quarterly in advance. In any instance that an item of Common Expense is not attributable to a sold Condominium Unit, Declarant shall bear the expense of such items. In any instance that, on the basis of an unsold Condominium Unit is not occupied, and such item is susceptible to apportionment and allocation (for example, but not limited to, expense of trash hauling or common heating), a reasonable apportionment and allocation of such item of Common Expense shall be made among the occupied and unoccupied Condominium Units.

### **ARTICLE 7: USE AND OTHER RESTRICTIONS.**

7.1 RESTRICTIONS ON USE. "Residential Units" shall mean all Condominium Units. A Residential Unit shall be used for residential purposes only, and no Residential Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. No Residential Unit shall be used at any time for any business or commercial activity, except that the Owner thereof may lease or rent such Residential Unit for private residential, living or sleeping purposes.

7.2 COMMON ELEMENTS RESTRICTIONS. All use and occupance of General Common Elements shall be subject to and governed by rules and regulations of the Association. No

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Owner and no Owner's guest(s) shall obstruct, damage or commit waste to any of the General Common Elements. No Owner and no Owner's guest(s) shall change, alter, repair or store anything in or on any of the Limited or General Common Elements without the prior written consent of the Association.

- 7.3 NO IMPERILING OF INSURANCE. No Owner and no Owner's guest(s) shall do anything or cause anything to be kept in or on the Project which might result in an increase in the insurance premiums of insurance obtained for the Project or which might cause cancellation of such insurance, without the prior written consent of the Association.
- 7.4 NO VIOLATION OF LAW. No Owner and no Owner's guest(s) shall do anything or keep anything in or on the project which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.
- 7.5 NO NOXIOUS, OFFENSIVE, HAZARDOUS OR ANNOYING ACTIVITIES. No noxious or offensive activity shall be carried on 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. Determinations with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.5 shall be made by the Board of Managers of the Association and shall be final.
- 7.6 NO UNSIGHTLINESS. No unsightliness shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in any of the General Common Elements, nothing shall be hung or placed upon any of the General or Limited Common Elements, and nothing shall be placed on or in windows or doors of Units, which would or might create an unsightly appearance. Window draperies shall be white or lined with white material in order to present a uniformly aesthetic exterior appearance. Determinations with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article 7.6 shall be made by the Board of Managers of the Association and shall be final.
- 7.7 RESTRICTION ON ANIMALS. No animals, birds, reptiles or insects shall be kept on any part of the Project without the prior written consent of the Association. This provision may be implemented by rules and regulations adopted by the Board of Managers of the Association.
- 7.8 RESTRICTION ON SIGNS. No signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Association. The Association shall permit the placing of at least one sign of reasonable size and dignified form to identify the project.
- 7.9 MAINTENANCE OF CONDOMINIUM UNIT. Each Condominium Unit and all improvements,

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fixtures, furniture and equipment therein shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and in good repair. No structural alterations within any Condominium Unit shall be made and no electrical, plumbing or similar work within any Condominium Unit shall be done without the prior written consent of the Association. Determinations with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.9 shall be made by the Board of Managers of the Association and shall be final.

7.10 NO VIOLATION OF RULES. No Owner and no Owner's guest(s) shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Condominium Units, the use of General or Limited Common Elements or otherwise. Determinations with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.10 shall be made by the Board of Managers of the Association and shall be final.

7.11 OWNER CAUSED DAMAGE. If, due to the act or neglect of an Owner or such Owner's guest(s), 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 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 a Special Assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Condominium Unit of such Owner as provided in Article 6 of this Declaration for Assessments or other charges.

7.12 RESERVATION. Notwithstanding any provision to the contrary contained in this Declaration, Declarant, its agents, employees and contractors may maintain during the period of construction, sale and lease, such facilities and activities as reasonably required, convenient or incidental thereto, including but without limitation, a business office, storage area, construction yards, signs, model Units, sales office, parking areas and lighting.

## **ARTICLE 8: INSURANCE**

8.1 INSURANCE REQUIREMENTS GENERALLY. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do business in the State of Colorado with a rating in Best's Insurance Guide (or any comparable publication) of at least A+AAAA (or any comparable rating). All such insurance, to the extent possible, shall name the Association as the insured, in its individual capacity and also either as attorney-in-fact or trustee for all Owners.

To the extent possible, such casualty, liability, and other insurance shall:

A. Provide for a waiver of subrogation by the insurer as to claim against the Association, its

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directors, officers, employees and agents and against each Owner and each Owner's employees, agent and guest(s).

- B. Provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents or of any Owner or such Owner's employees, agents or guest(s).
- C. Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee.
- D. Contain a standard mortgage clause endorsement in favor of the Mortgagee of any Condominium Unit or part of the Project except a Mortgagee of a Condominium Unit or part of the Project who is covered by other and separate insurance.
- E. Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each Owner, to each Mortgagee covered by any standard mortgage clause endorsement.

To the extent possible, such public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice.

Copies of insurance policies shall be issued to each Owner and each Mortgagee.

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Condominium Unit by an Owner or other insurance obtained at the request of any specifically benefiting any particular Owner, shall be a Common Expense to be covered by Assessments against each Owner and his Condominium Unit according to the undivided interest in the General Common Elements appurtenant to his Unit.

- 8.2 CASUALTY INSURANCE. The Association shall obtain and maintain casualty insurance covering the Project and each Condominium Unit covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, including vandalism and malicious mischief and, if available and if deemed appropriate by the Association, war risk, for the full insurable replacement cost of the Project, including each Condominium Unit. At the option of the Association, such insurance may also cover additions, alterations or improvements to a Condominium Unit made by an Owner if the Owner reimburses the Association for any additional premiums attributable to such coverage. The Association shall not be obligated to apply any insurance proceeds to restore a Condominium Unit to a condition better than the conditions existing prior to the making of additions, alterations or improvements by an Owner in the absence of insurance covering such additions, alterations or improvements as aforesaid.

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8.3 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering personal liability, property damage liability, automobile personal and property damage liability of the Association, its officers, directors, employees and agents and of each Owner and each Owner's employees, agents and guests arising in connection with ownership operation, maintenance, occupancy or use of the Project or of any Condominium Unit in the project, with limits of not less than \$1,000,000.00 for each person and not less than \$3,000,000.00 for each occurrence with respect to personal liability and with limits of not less than \$500,000.00 for each accident with respect to property damage liability.

8.4 WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY INFURANCE. The Association shall obtain and maintain Workmen's Compensation and employer's liability insurance as may be necessary to comply with applicable laws.

8.5 INSURANCE BY OWNERS. Except to the extent coverage thereof may be obtained by the Association and be satisfactory to an Owner, each Owner shall be responsible for obtaining insurance he deems desirable, including insurance covering his furnishings and personal property and covering personal liability of him and his employees, agents and guest(s). Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and guest(s).

8.6 RECEIPT AND APPLICATION OF INSURANCE PROCEEDS. Except as some particular person shall have a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association. All insurance proceeds or recoveries received by the Association shall be applied by the Association as follows: first as expressly provided elsewhere in this Declaration; the balance, if any, jointly to the Owners and their first Mortgagees in proportion to their respective interest in the General Common Elements.

8.7 OTHER INSURANCE BY THE ASSOCIATION. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

## **ARTICLE 9: DESTRUCTION, DAMAGE OR OBSOLESCENCE, RESTORATION, ASSOCIATION AS ATTORNEY-IN-FACT, CONDEMNATION.**

9.1 This Declaration does hereby make the Association the irrevocable attorney-in-fact, to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement, and improvement of any Condominium Units, Buildings, Common

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Elements, or other portion of the Project which has been so destroyed, damaged, condemned or becomes obsolete. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and 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 herein provided. All of the Owners irrevocably constitute and appoint the TWIN RIVERS OWNERS ASSOCIATION as their true and lawful attorney in their name, place and stead for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of a Condominium Unit Owner, which are necessary and appropriate to exercise the powers herein granted.

In the event that the Association is dissolved or becomes defunct, a meeting of the Condominium Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence, or condemnation shall be appointed. Said appointment must be approved by the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Common Elements and at least seventy-five percent (75%) of the first Mortgagees of the Condominium Units. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement, unless all of the Owners and all first Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

- A. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to restore 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). Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.
- B. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than seventy percent (70%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment to be made against all of the Owners and their Condominium Units. Such Special Assessment shall be a Common Expense and made pro rata according to each Owner's percentage of responsibility and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment. The

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Assessment provided for herein shall be a debt of each Owner and lien on his Condominium Unit and may be enforced and collected as is provided in Paragraph 6.6. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this Section. Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay the Association the costs and expenses for filing the notice, interest at the highest rate permitted by law not in excess of eighteen percent (18%) per annum on the amount of the Assessment and all reasonable attorney's fees. 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:

1. For payment of the balance of the lien of any first mortgage.
  2. For payment of taxes and Special Assessments liens in favor of any assessing entity and the customary expenses of sale.
  3. For payment of unpaid Common Expenses and all costs, expenses and fees incurred by the Association.
  4. For payment of junior liens and encumbrances in the order of and to the extent to their priority.
  5. The balance remaining, if any, shall be paid to the Condominium Unit Owner.
- C. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than seventy percent (70%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment to be made against all of the Owners and their Condominium Units, provided however, that Owners representing an aggregate ownership interest of seventy-five percent (75%) or more, of the Common Elements and at least seventy-five percent (75%) of the first Mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, 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 or Assistant Secretary, the entire Project shall be sold by the Association, pursuant to the provisions of this Section, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and By-Laws. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Condominium Unit Owner's interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first Mortgage encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be



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based upon each Condominium Unit Owner's 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 subsection B (1 through 5) of this Section. In the event that the damage is to be repaired or reconstruction is to be made then the provisions of paragraph 9.1 B shall apply.

- D. The Owners representing an aggregate ownership interest of eighty percent (80%) or more, of the Common Elements in this Project may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the approval of at least eighty percent (80%) of the first Mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such 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. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent (10%) per annum, and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium 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 subsection B (1 through 5) of this Section.
  
- E. The Owners representing an aggregate ownership interest of eighty percent (80%) or more, of the Common Elements may agree that the Condominium Units are obsolete and that the same should be sold. Such plan or agreement must have the approval of all of the first Mortgagees of the Condominium Units. 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 or Assistant 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 the Declaration, the Map, the Articles of Incorporation and the Bylaws. The sale proceeds shall be apportioned among the Owners on the basis of each Owner's interest in the 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 Owners. 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 subsection B (1 through 5) of his Section.

9.2 CONDEMNATION. If at any time or times during the continuance of the Condominium Ownership pursuant to this Declaration, all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

- A. Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is

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hereafter call the "Condemnation Award" shall be payable to the Association.

- B. Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium Ownership pursuant hereto shall terminate. The Condemnation Award shall be Apportioned among the Owners on the same basis as each Condominium Unit Owner's interest in the General Common Elements, provided however, that if a standard different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Paragraph 9.1 B (1 through 5).

- C. Partial Taking. In the event that less than the entire Condominium Project is taken or condemned, 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 between compensation, damages or other proceeds and shall apportion the amounts allocated among the Owners as follows:

1. The total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners on the basis of each Owner's interest respectively in the General Common Elements.
2. The total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned.
3. The respective amounts allocated to the taking of or damage to a particular Unit and to the improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved.
4. The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances or as determined by judicial decree.

If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in Paragraph 9.1 B (1 through 5).

- D. The Association shall timely notify each first Mortgagee of any Condominium Unit of the

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commencement of the condemnation proceedings or eminent domain proceedings and shall notify said Mortgagees in the event of the taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds \$10,000.00.

## **ARTICLE 10: MISCELLANEOUS.**

- 10.1 DURATION OF DECLARATION. All provisions contained in this Declaration, shall continue and remain in full force and effect until Condominium Ownership of the Project and this Declaration are terminated or revoked as hereinafter provided.
- 10.2 REVOCATION OR AMENDMENT. Except as it otherwise provided, this Declaration shall not be revoked unless all of the Owners, and all of the Holders of any recorded mortgage or deed of trust covering or affecting any or all of the Condominium Units in the Project consent in writing and agree to such revocation by instrument(s) duly recorded. This Declaration shall not be amended unless the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more, of the General Common Elements in the Condominium Project, and all of the Holders of recorded first mortgages or deeds of trust consent in writing and agree to such Amendment by instrument(s) duly recorded; provided however, that the undivided interest in the General Common Elements appurtenant to each Unit shall have a permanent character and shall not be altered without the consent of all the Unit Owners and all of the Holders of any recorded mortgage or deed of trust as expressed in an amended Declaration duly recorded.
- 10.3 CERTIFICATE OF IDENTITY. The Association shall, from time to time, record a Certificate of Identity, which sets forth the mailing address of the Association, the names of person then comprising the Board of Managers, 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 time elapsed since the date thereof. The first such Certificate shall be recorded by the Association immediately subsequent to recording this Declaration. A copy of each such Certificate shall be furnished to each known Mortgagee of a Condominium Unit.
- 10.4 REGISTRATION OF MAILING ADDRESS. Each Owner and mortgage holder shall register his mailing address with the Association, on such forms as required by the Association, and notices or demands intended to be served upon an Owner shall be sent by mail, postage prepaid, addressed in the name of the Owner at such registered address.
- 10.5 EFFECT OF PROVISIONS OF DECLARATION. Each and every provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each and every provision of this Declaration, and any necessary exception or reservation, estate, right or interest to effectuate any provision of this Declaration shall:
- A. Be deemed incorporated in each lease, assignment or other instrument by which any right, title or interest in the Project or in any Condominium Units is created, whether or not set forth or referred to in such instrument.

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- B. By virtue of acceptance of any right, title or interest in the Project or in any Condominium 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 Owner.
- C. 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 Project and each Condominium Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Project and each Condominium Unit.
- D. Be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Project and each Condominium Unit in favor of the Association.

10.6 ENFORCEMENT AND REMEDIES. Each provision of this Declaration with respect to an Owner or the Condominium Unit of such Owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages, or in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's guest(s) from use of any General Common Elements. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

10.7 PRIORITIES OF ASSOCIATION LIEN FOR COMMON EXPENSES. The Owner of a Condominium Unit may create a junior mortgage (junior to the lien, deed of trust or other encumbrance of a first Mortgagee), liens or encumbrances on his interest in a Condominium Unit; provided, however, that any such junior mortgages, liens or encumbrances shall always be subordinate to the prior and paramount lien of the Association for Common Expenses and all of the terms, conditions, covenants, restrictions, uses, limitations and obligations under this Declaration, Association Articles of Incorporation and By-Laws and provided further, that such junior Encumbrancer(s) shall release, for purposes of restoration of any improvements upon the encumbered Condominium Unit, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises by the Association. Such release shall be furnished forthwith by a junior Mortgagee upon written request of the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior Mortgagee.

10.8 LIMITED LIABILITY; INDEMNIFICATION. Neither Declarant, the Board of Managers of the Association, nor any officer, agent or employee of any of the same shall be liable to the Association or any Owner for any action or for any failure to act with respect to any matter so long as such person or entity was not guilty of negligence in the construction of the Condominium Project or of fraud, gross negligence or bad faith in taking such action or failing to act.

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The Association shall indemnify Declarant, each member of the Board of Managers of the Association and any employee or agent of Declarant or the Association against any loss or threat of loss as a result of any claim or legal proceeding relating to the performance or nonperformance of any act concerning the activities of the Association; provided however, that with respect to the subject matter of the claim or legal proceeding the party against whom the claim is made or legal proceeding is directed was not guilty of negligence in the construction of the Condominium Project or of fraud, gross negligence or bad faith in such performance or nonperformance.

The indemnification authorized by this Paragraph 10.8 shall include payment of (a) reasonable attorney's fees or other expenses incurred in settling any claim or threatened action or incurred in any finally adjudicated legal proceeding; and (b) expenses incurred in the removal of any liens affecting any property of the indemnitee. Indemnification shall be made from assets of the Association and no Owner shall be personally liable to any indemnitee.

This Paragraph 10.8 shall inure to the benefit of the Declarant, the Association, the members of the Board of Managers of the Association, the employees and agents of Declarant and the Association, and their respective heirs, executors, administrators, successors and assigns.

10.9 RESERVATION TO ASSOCIATION. Declarant reserves to the Association the right to establish utility easements and other easements consistent with the Condominium use of the Condominium Project.

10.10 RESERVATION BY DECLARANT. During the period of development of the Condominium Units, the monthly Assessments for Common Expenses shall be based upon the amount of the actual expenses incurred which shall be allocated equitably among all of the Owners, and shall not include any amount for contingencies, reserves or sinking funds. The Declarant shall be allowed to maintain reasonable signs on the Project to assist it in the selling of the Units, other provisions hereof notwithstanding.

10.11 GENERAL

- A. 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.
- B. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provisions, paragraph, sentence, clause, phrase or word in any other circumstance.
- C. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision of this Declaration.
- D. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

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- E. The provisions of this Declaration shall be in addition to and supplemental to the Condominium Ownership Act of the State of Colorado.
- F. Pursuant to the requirements of the Colorado Condominium Act, the Declarant states that at present there are no recreational facilities located at the Project since construction of the first building has just started. Saunas, spas, exercise facilities, etc., are planned in Units 3 and 4 of the Nystrom Building when completed.
- G. The provisions of the Condominium Ownership Act are hereby incorporated by reference into this Declaration; provided, however, that the provisions of this Declaration shall be paramount to the provisions of the Condominium Ownership Act where permissive variances are permitted; otherwise, the provisions of the Condominium Ownership Act shall prevail.
- H. That 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.

#### **ARTICLE 11: RESERVATION TO ENLARGE AND SUPPLEMENT CONDOMINIUM PROJECT .**

- A. Declarant, for itself, its successors and assigns, expressly reserves, until December 31, 1987, the right to enlarge this Condominium Project by submitting additional Real Property (which is described in Exhibit "C" attached hereto and incorporated herein by reference) and improvements. Such additions shall be expressed in and by a duly recorded Supplement to the Map. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements to the Map and Declaration without specific reference thereto.
- B. Such Supplements to this Declaration shall provide for a division of such additionally submitted Real Property and improvements into Condominium Units. Each Unit shall be separately designated, and each Building shall be identified by a symbol or designation dissimilar to any other Building in the Condominium Project. The undivided interest in and to the Common Elements appurtenant to each such Unit shall not be a part of the Common Elements of the Condominium Units described and initially created by this Declaration and the Map, nor a part of the Common Elements of subsequently submitted Condominium Units; provided however, that all Owners of Condominium Units in the Condominium Project shall have a non-exclusive right in common with all of the other Owners to use the sidewalks, pathways, driveways, recreational facilities and all other Common elements within this entire Condominium Project so designated on the Map and all amendments and supplements thereto.
- C. Except as may be otherwise provided by the provision of such Supplement(s) to this Declaration, all the provisions contained in this Declaration shall be applicable to such additional Condominium Units submitted to this Condominium Project.

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- D. As additional Condominium Units are submitted to this Condominium Project and in order that the Common Expenses of this Condominium Project be shared proportionately and equitably by the Owners of the initially submitted Condominium Units and the Owners of all subsequently submitted additional Condominium Units, the Common Expenses for each Unit within the Project shall be determined by multiplying the total amount of funds needed by a fraction, the numerator of which is each Unit's Percentage of Responsibility and the denominator of which is the aggregate of all of the Percentages of Responsibility assigned to all Condominium Units. Further, each Condominium Unit, regardless of the number of Owners, shall be entitled to one (1) vote for all purposes hereunder and shall not change by the enlargement of the Condominium Project or otherwise.
- E. Each Owner shall have the non-exclusive right, together with all other Owners, to use all General Common Elements, open spaces, recreational facilities, grass and landscaping areas and all other areas in the entire Project which are not herein specifically dedicated to the use of less than all the Owners. This easement shall be irrevocable and shall be for the purposes of egress and ingress, recreational and social use and shall apply to all Property hereafter committed to this Condominium Project.
- F. It is contemplated that additional lands reflected on Exhibit "C" will ultimately be committed to this Project, but the Declarant, its appointees, successors and assigns, shall have no affirmative obligation to do so. The rights of the Declarant, its appointees, successors and assigns, as otherwise described in these Declarations, shall apply to all Properties which are added to this Project in accordance with these provisions relating to enlargement thereof.

## **ARTICLE 12: INTERVAL OWNERSHIP**

12.1 PLAN OF INTERVAL OWNERSHIP. Declarant reserves the right for itself or Winter Park Resort Condo's, Ltd., a Colorado Limited Partnership, its successors and assigns, to submit all or some of the Condominium Units in the Project to the plan of Interval Ownership set forth in this paragraph. The provisions of this Article relate only to those Condominium Units submitted to the plan of Interval Ownership and shall govern the ownership of Interval Estates in said Condominium Units and the rights, duties and obligations of Interval Owners for so long as a Condominium Unit remains an Interval Unit. The right to submit a Condominium Unit to the plan of Interval Ownership shall extend only to the Declarant, its successor or assigns, and Winter Park Resort Condo's, Ltd., its successors and assigns, and shall specifically not be available to purchasers of Condominium Units in the Project, their successors and assigns, other than Winter Park Resort Condo's, Ltd. Submission of a Condominium Unit to a Plan of Interval Ownership shall be subject to the prior written consent of any first Mortgagee or any Holder of a first Deed of Trust of record. A purchaser may acquire more than one Interval Estate and thereafter convey or encumber each Interval Estate so acquired separately. In no event, however, shall an Interval Owner convey or encumber less than an Interval Estate as defined herein, or attempt to subdivide an Interval Estate into lesser interests. In the event all Interval Estates in an Interval Unit are acquired by one Owner, such Condominium Unit may, at such Owner's election by notice duly recorded, be withdrawn from this plan of Interval Ownership. In the event such election is made the Interval Owners' Association shall reconvey the

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Maintenance Weeks associated with the Interval Unit to the Owner so electing. The provisions of this Declaration that apply to the Interval Estates created hereunder, provided however in the event of an inconsistency between this Article and the remaining provisions of the Declaration with respect to the ownership of an Interval Estate and the rights, duties, and obligations of Interval Owners, then the provisions of this paragraph shall control.

12.2 SUBMISSION OF CONDOMINIUM UNIT TO INTERVAL OWNERSHIP. Declarant, or Winter Park Resort Condo's, Ltd., may submit a Condominium Unit to interval Ownership either by recording a properly acknowledged notice executed by Declarant, or Winter Park Resort Condo's, Ltd. describing the Condominium Unit to be submitted to Interval Ownership and reciting Declarant's, or Winter Park Resort Condo's Ltd.'s intention to do so or by Declarant's, or Winter Park Resort Condo's, Ltd.'s execution, delivery and recordation of a deed conveying an Interval Estate to an Interval Owner. Each Interval Estate shall constitute an estate in real property separate and distinct from all other Interval Estates in the Unit and other Units, which estate may be separately conveyed and encumbered. By acceptance of a deed to an Interval Estate, each Interval Owner waives his right to bring a suit for partition except in accordance with the provisions of this Declaration. At the time of committing a Unit to Interval Ownership, in accordance with the provisions of this Paragraph 12.2, but prior to the sale of any interest in and to the Interval Unit, the Declarant or Winter Park Resort Condo's, Ltd. may, by recording a written notice, establish the commencement day of Interval Week No. 1 for the Unit being committed to Interval Ownership as any day of the week, the contrary provisions of 1.15 F notwithstanding. The form of such notice shall be as follows:

KNOW ALL MEN BY THESE PRESENTS, that:

Condominium Unit \_\_\_\_\_,  
\_\_\_\_\_ Building,

TWIN RIVERS CONDOMINIUMS,

According to the Map(s) thereof, filed for record, and according to the Condominium Declaration for Twin Rivers Condominiums, recorded \_\_\_\_\_, 1980 in Book \_\_\_\_\_, at Page \_\_\_\_\_,

County of Grand,  
State of Colorado.

is hereby submitted to a Plan of Interval Ownership as provided in Article 11 of the Declarations for Twin Rivers Condominiums.

FURTHER, the determination of Interval Weeks shall be in accordance with the following:

Interval Week No. 1 for Unit \_\_\_\_\_, \_\_\_\_\_ building, is the seven (7) days commencing at noon the first \_\_\_\_\_ in each year. Unit Week No. 2 is the seven (7) days next succeeding Unit Week No. 1. Additional Unit Weeks consecutively numbered occupy each of the following successive seven (7) day period up to and including Week No. 51. Week No. 52 contains the seven (7) day period immediately following the end of Unit Week No. 51, plus, Week No.



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52 shall include any other days prior to the beginning of Week No. 1 regardless of the month or the year. Unit Weeks run from noon on the first \_\_\_\_\_ of the Interval to noon on the last day of the interval provided however, that the right of possession and occupancy shall not commence until 6:00 P.M. local time on the first \_\_\_\_\_ of the Interval and shall end at 10:00 A. M. local time on the last day of the Interval.

TWIN RIVERS DEVELOPMENT COMPANY,  
a Colorado Limited Partnership

by: \_\_\_\_\_,  
General Partner

(or)

WINTER PARK RESORT CONDO'S, LTD.,  
a Colorado Limited Partnership

by: \_\_\_\_\_,  
General Partner

Failure to timely record the above statement with regard to any Unit being submitted to Interval Ownership shall result in that Unit's Interval Weeks being determined according to Paragraph 1.15 F. hereof.

12.3 LEGAL DESCRIPTION OF AN INTERVAL ESTATE. A contract for sale of an Interval Estate written prior to the filing for record of this Declaration and the Map may legally describe an Interval Estate as follows:

Condominium Unit \_\_\_\_\_,  
Interval Week \_\_\_\_\_,  
\_\_\_\_\_ Building,

TWIN RIVERS CONDOMINIUMS,

According to the Maps thereof filed for record, and according to the Condominium Declaration for TWIN RIVERS CONDOMINIUMS, recorded \_\_\_\_\_ 1980, in Book \_\_\_\_\_, at Page \_\_\_\_\_,

County of Grand,  
State of Colorado.

After submission of a Condominium Unit to Interval Ownership, every contract for sale, deed, lease, mortgage, trust deed, or other instrument relating to an Interval Estate will legally describe the Interval Estate as follows:

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Condominium Unit \_\_\_\_\_,

Interval Week \_\_\_\_\_,

\_\_\_\_\_ Building,  
TWIN RIVERS CONDOMINIUMS,

According to the Maps thereof filed for record and according to the Condominium Declarations for TWIN RIVERS CONDOMINIUMS, and recorded \_\_\_\_\_, 1980, in Book \_\_\_\_\_, at Page \_\_\_\_\_.

County of Grand,

State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect an Interval Estate and all Common Elements and easements appurtenant thereto. Such legal description shall also convey to the grantee named in the document an undivided interest in all furniture and furnishings then located in the Interval Unit and used for the operation thereof in the same ownership interest as the Interval Owner's undivided interest as tenant-in-common in the Interval Unit, as well as any furniture and furnishings thereafter acquired for the Interval Unit. The transfer of an interest in Interval Estate shall transfer to the grantee ownership of all of the transferor's undivided interest in such personal property without further reference thereto.

12.4 ADMINISTRATION AND MANAGEMENT; ASSOCIATION, MANAGING AGENT. The Twin Rivers Interval Owners' Association will be formed as a Colorado corporation, not for profit, to manage the Interval Units and to further the interest of all Interval Owners. The Interval Owners' Association shall have all powers necessary or desirable to effectuate such purposes. Subject to the provisions of this Declaration, the administration and management of the Interval Owners' Association shall be governed by the Articles of Incorporation and Bylaws thereof. An Interval Owner, upon becoming the Owner of an Interval Estate, shall be a member of the Interval Owners' Association and shall remain a member for the period of his ownership. An Interval Owner shall be entitled to a vote, the size of which vote shall be based upon each Interval Owner's undivided interest as tenant-in-common in the Interval Unit. Voting by proxy shall be permitted. The affairs of the Interval Owners' Association shall be managed by a Board of Managers as is provided in the Articles of Incorporation and Bylaws of the Interval Owners' Association. Notwithstanding anything to the contrary provided herein, until two-thirds (2/3) of the Interval Estates in the Project, have been sold (meaning title to said Interval Estate has been conveyed by the Declarant to a party other than Winter Park Resort Condo's, Ltd., or until Winter Park Resort Condo's, Ltd. has conveyed two-thirds (2/3) of the Interval Estates), or until December 31, 1995, whichever first occurs, the members of the Board of Managers shall be appointed by the Declarant and need not be Interval Owners. Declarant shall have the option at any time to turn over the control of the Board of Managers to the Interval Owners at any meeting of the Interval Owners' Association called for that purpose. The Board of Managers may by resolution delegate any of its duties, powers and functions to a person or firm which shall act as Managing Agent. Such Managing Agent may, but does not have to be, the same Managing Agent as is retained by the Twin Rivers Condominium Association. An Interval Owner shall also be a member in the Twin Rivers Condominium Association. In order to effectuate the representation of the Interval Owners in the Twin Rivers Condominium Association, each Interval Owner, by accepting a deed to an Interval Ownership Estate, irrevocably appoint for a

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10 year period commencing on the recordation of this Declaration, the Board of Managers of the Interval Owners' Association as his attorney-in-fact to represent such Interval Owner at any and all regular and special meetings of the Twin Rivers Condominium Association, and thereat to vote the interests of the Interval Owners as members of the Twin Rivers Condominium Association, according to the votes assigned to the Condominium Units submitted to Interval Ownership. Such appointment shall be automatically renewed for successive 10 year periods until termination of the plan of Interval Ownership, unless the Interval Owners at the Annual Meeting of the Interval Owners' Association or special meeting called for such purpose vote to revoke the appointment and therefore after independently exercise their vote in the Twin River Condominium Association.

12.5 POWERS AND DUTIES OF THE INTERVAL OWNERS' ASSOCIATION. By way of enumeration and without limitation, the Interval Owners' Association shall have the following powers and duties:

- A. Coordinate the plans of Interval Owners for moving their personal effects into and out of the Interval Units with a view toward scheduling such move so that there will be a minimum of inconvenience to other Owners.
- B. Maintain business-like relations with Interval Owners whose service requests shall be received, considered, and recorded in a systematic fashion in order to show the action taken with respect to each request.
- C. Cause each Interval Unit to be maintained in a first class manner and condition. The Interval Owners' Association shall determine the color scheme, decor and furnishing of each Interval Unit as well as the proper time for redecorating and replacement thereof.
- D. Bill each Interval Owner for the expense of occupancy of an Interval Unit during said Interval Owners' Interval Weeks, which the Interval Owners' Association determines are the individual expenses of the particular Interval Owner including, but not limited to, long distance and other extraordinary telephone charges, extraordinary repairs or charges for damages to the Interval Unit, its furniture, furnishings, equipment, fixtures, appliances and carpeting caused by an Interval Owner or his guests, firewood, other charges for services rendered by the Managing Agent on behalf of the particular Interval Owner, janitorial and maid service provided for each Interval Week and included within the Interval Unit Maintenance Fee provided for in paragraph 12.6 below.
- E. Collect the Interval Unit Maintenance Fee provided for in paragraph 12.6 below.
- F. Accept from the Declarant, conveyance of title to the Maintenance Weeks designated by Declarant for each Condominium Unit submitted to this plan in Interval Ownership.
- G. Prepare a calendar of Interval Weeks which shall at all times establish the dates of each Interval Week at least five years into the future.

12.6 INTERVAL UNIT MAINTENANCE FEE. In addition to the Assessment for Common

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Expenses established by the Twin Rivers Condominium Association to meet the Common Expenses of the Project, the Interval Owners' Association shall also establish a separate Interval Unit Maintenance Fee which will be assessed against Interval Units to cover the additional costs of operating the Interval Unit including, but not limited to the following:

- A. The pro rata share of the Common Expenses as defined in the Declaration attributable to each Interval Estate.
- B. Maintenance, and regularly scheduled cleaning and maid service and upkeep of the Interval Unit.
- C. Repair and replacement of furniture, fixtures, appliances, carpeting, and utensils.
- D. Any additional premium for property or liability insurance occasioned by the submission of a Condominium Unit to Interval Ownership.
- E. Utilities separately metered to the Interval Unit.
- F. Real and personal property taxes assessed against the Interval Estates.
- G. Management fees assessed by the Managing Agent to cover cost of operating a Unit pursuant to this plan of Interval Ownership which are in addition to the management fee set by the Managing Agent (if the Managing Agent for the Association and Interval Owners' Association are the same, and if not, then the Management Fee assessed by the Managing Agent for the Interval Owners' Association).
- H. Any other expenses incurred in the normal operation of the Project attributable to operation of the Condominium Unit as an Interval Unit and not included within the definition of Common Expenses provided for in this Declaration.

The Interval Unit Maintenance Fee shall be assessed and pro-rated among the Interval Owners on the basis of each Interval Owner's undivided interest as tenant-in-common in the Interval Unit. The Interval Unit Maintenance Fee shall be paid by Interval Owners pursuant to a schedule established by the Board of Managers of the Interval Owners' Association. These Assessments shall be the personal obligation of the Interval Owner as provided in Paragraph 6.7 of the Declaration for Common Assessments and all sums assessed but unpaid shall constitute a lien against the Interval Estate pursuant to paragraph 6.5 of the Declaration.

12.7 ACCEPTANCE OF PLAN OF INTERVAL OWNERSHIP; ENFORCEMENT, INDEMNIFICATION. By acceptance of a Deed to an Interval Estate an Interval Owner agrees to be bound by the terms and conditions of the Declarations, specifically including, but not limited to, the provisions of this Paragraph. In addition to the foregoing, in the event any Interval Owner fails to vacate an Interval Unit after termination of his Interval Week(s) or otherwise uses or occupies or prevents another Interval Owner from using or occupying an Interval Week, that Interval Owner shall be in default hereunder and shall be subject to immediate removal, eviction

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or ejection from the Interval Unit wrongfully occupied; shall be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection; and shall pay to the Interval Owner entitled to use the Interval Unit during such wrongful occupancy, as liquidated damages for the wrongful use of the Interval Unit, a sum equal to two hundred percent (200%) of the fair rental value per day for the Interval Unit wrongfully occupied as determined by the Interval Owners' Association in its sole discretion for each day, or portion thereof, including the day of surrender, during which the Interval Owner wrongfully occupies a unit, plus all costs and reasonable attorneys' fees involved in the enforcement of this provision which amount may be collected by the Interval Owners' Association in the manner provided herein for the collection of Assessments.

Any Interval Owner who suffers or allows a Mechanic's Lien or other lien to be placed against his Interval Estate or the entire Condominium Unit, shall indemnify, defend and hold each of the other Interval Owners harmless from and against all liability or loss arising from the claim of such lien. The Interval Owners' Association shall enforce such indemnity by collection from the Interval Owner who suffers or allows such a lien the amount necessary to discharge the lien and all costs incidental thereto, including reasonable attorneys' fees. If such amount is not promptly paid, the Interval Owners' Association may collect the same in the manner provided herein for the collection of Assessments.

12.8 PERIOD OF CONDOMINIUM OWNERSHIP. The separate Condominium Estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner and as is provided in Article 10 of this Declaration or until terminated in the manner and as is provided in Paragraphs 9.1.C. or 9.1.E. of this Declaration.

12.9 INTERVAL OWNERSHIP OF COMMON ELEMENTS. The undivided percentage interest in Common Elements for each Condominium Unit as provided for in the Declaration for Twin Rivers Condominiums shall be allocated among the Interval Owners of each such Unit committed to Interval Ownership pro rata according to the number of Interval Weeks owned.

The fee title to each Interval Week shall include the Unit Week(s) and the respective equal undivided interest as described above. A conveyance or encumbrance of the Interval Week shall be deemed to include the applicable undivided interest. An attempt to separate the Interval Week from its applicable undivided interest shall be null and void.

12.10 PARKING. The use of automobile parking spaces by an Interval Owner whether as part of the General Common Elements or specifically appurtenant to a Condominium Unit, shall be limited to the period of occupancy of the Interval Week(s) each year owned by such Interval Owner.

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IN WITNESS WHEREOF, Declarant has executed this Declaration this 27<sup>th</sup> day of February, 1981.

TWIN RIVERS DEVELOPMENT COMPANY, a Colorado Limited Partnership

*In the true document found in County Records, there are several pages of signatures and notary seals, etc. These have been eliminated for this document.*

*In the true document found in County Records, there are several pages of Exhibits. These have been eliminated for this document.*