

CONDOMINIUM DECLARATION
FOR
THE HERITAGE MEADOWS CONDOMINIUMS

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CONDOMINIUM DECLARATION

FOR

THE HERITAGE MEADOWS CONDOMINIUMS

PREAMBLE

THIS DECLARATION, made and entered into by RALPH R. HOFELE, hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, Declarant is the Owner of:

Lots 1 through 4 and Lots 34 through 37, HERITAGE MEADOWS, a subdivision of the City of Boulder, Colorado, in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 19, Township 1 North, Range 70 West of the 6th P.M., City of Boulder, State of Colorado;

hereinafter referred to as "The Property"; and

WHEREAS, Declarant desires to establish a Condominium Project under the Condominium Ownership Act of the State of Colorado, to wit: Colo. Rev. Stat. Ann. §38-33-101, et seq. (1973, as amended); and

WHEREAS, Declarant does hereby establish a plan for the separate fee simple ownership of real property estates consisting of Condominium Apartments in The Building, both as hereinafter defined, and the co-ownership by the separate owners thereof, as tenants in common, of all the remaining property, which is hereinafter referred to as the General Common Elements.

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

ARTICLE ONE: DEFINITIONS

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

1.1 CONDOMINIUM APARTMENT or APARTMENT means the individual air space of such Condominium and its Garage Unit, which is contained in an enclosed room or rooms occupying all or part of a floor or floors in The Building as hereinafter defined. Each Condominium Apartment together with its Garage Unit is shown on The Map as hereinafter defined and is identified thereon with a number.

1.2 CONDOMINIUM UNIT or UNIT means the fee simple interest and title to a Condominium Apartment and an undivided one-eighth (1/8) interest in the General Common Elements appurtenant to such Condominium Apartment and all other rights and burders created by this Declaration.

1.3 OWNER means the person or legal entity owning a Condominium Apartment in fee simple together with an undivided interest in fee simple in the General Common Elements in the percentage specified and established in this Declaration, including the Declarant so long as any Unit remains unsold.

1.4 GENERAL COMMON ELEMENTS means all of the Condominium Project, as hereinafter defined, except the portions thereof which constitute Condominium Apartments, and also means all parts of The Building or any facilities, improvements and fixtures which may be within a Condominium Apartment which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of The Building or any part thereof or any other Condominium Apartment therein.

Without limiting the generality of the foregoing, the following shall constitute General Common Elements: (a) all of the land and easements which are part of The Project; (b) all foundations, porches, balconies, patios, and parking spaces (subject to specific assignment for individual Owner's use as Limited Common Elements, as hereinafter defined and provided); (c) the exterior walls of The Building, the main or bearing walls, the floors within The Building; (d) all utility, service and maintenance fixtures, apparatus, installations and central facilities for electricity, gas, telephone, television, air conditioning, incineration, or similar utility, service for maintenance purposes; (e) all other parts of The Project necessary for common use or convenient to The Project's existence, maintenance and safety, to include the privacy fences which enclose the rear and side yard Limited Common Elements.

1.5 LIMITED COMMON ELEMENTS means those General Common Elements which are reserved for the use of certain Owners to the exclusion of the others.

1.6 ASSOCIATION means The Heritage Meadows Condominium Association, a Colorado corporation, not for profit, its successors and assigns.

1.7 THE BUILDING means one or more of the building improvements erected within THE PROJECT.

1.8 COMMON EXPENSES means and includes all expenses of administration, maintenance, repair or replacement of the General Common Elements.

1.9 CONDOMINIUM PROJECT or THE PROJECT means all of The Property, The Building, The Apartments, the General Common Elements and Limited Common Elements and all improvements thereon, submitted to this Declaration.

1.10 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the ByLaws of the Association.

1.11 BYLAWS means the ByLaws adopted by the Association as amended from time to time.

1.12 ARTICLES means the Articles of Incorporation of the Association.

1.13 DECLARATION shall mean this Condominium Declaration for The Heritage Meadows Condominiums, as may be amended from time to time.

1.14 MEMBER shall mean and refer to all those who are Members of the Association as provided in Paragraph 4.4 hereof.

1.15 ASSESSMENTS shall mean all monies due the Association from Members as duly assessed against the membership by the Board of Directors of the Association in accordance with ARTICLE FIVE of this Declaration.

1.16 FIRST MORTGAGEE shall mean a person or entity who is the beneficiary of a mortgage or deed of trust reflecting a first lien against a Condominium Unit within The Project.

1.17 RULES shall mean the Rules and Regulations adopted by the Board of Directors as amended from time to time.

1.18 SINGLE FAMILY RESIDENCE shall mean and refer to a single house-keeping unit which includes not more than three adults who are legally unrelated, together with their legal children.

1.19 THE MAP means the Condominium Map of The Heritage Meadows Condominiums which shall fully and accurately depict the layout, measurements and location of all of the improvements, the Condominium Apartment and Garage Unit designations, the dimensions of such Condominium Apartments and Garage Units and the elevations of the floors and ceilings.

Declarant hereby reserves unto the Board of Directors of the Association the right, from time to time, without the consent of any Owner being required to establish, vacate and relocate outside The Building utility easements, access road easements, parking spaces and to establish certain General Common Elements as Limited Common Elements.

ARTICLE TWO: NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

2.1 Division into Units, Estates of an Owner. The Condominium Project is hereby divided into eight (8) Units, each consisting of a separate fee simple estate in a particular Condominium Unit as more fully described in Paragraph 1.2 hereof.

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

2.3 Description of a Condominium Unit. Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a Condominium Unit by its identifying number followed by the words, The Heritage Meadows Condominiums:

A sufficient description of a Condominium Unit shall be as follows:

Condominium Unit , THE HERITAGE MEADOWS CONDOMINIUMS, as shown on the Condominium Map for THE HERITAGE MEADOWS CONDOMINIUMS recorded in Plan File on Film , as Reception No. , and as defined by the CONDOMINIUM DECLARATION FOR THE HERITAGE MEADOWS CONDOMINIUMS recorded on Film as Reception No. , both recorded in the office of the County Clerk and Recorder, Boulder, Colorado.

Every description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Apartment, including its Garage Unit, the General Common Elements and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include: (a) a non-exclusive easement for appropriate ingress and egress throughout The Project and for appropriate use of the General Common Elements which are not Limited Common Elements; (b) the right to the appropriate easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

2.4 Apartment Boundaries. The interior unfinished surfaces of the walls, floors and ceilings shall mark the perimeter boundaries of a Condominium Apartment and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Condominium Apartment, and all other portions of the walls, floors, or ceilings are a part of the General Common Elements.

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If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Condominium Apartment, any portion thereof serving only that Apartment is a Limited Common Element allocated solely to that Apartment, and any portion thereof serving more than one Apartment or any portion of the General Common Elements is a part of the General Common Elements.

Subject to the above, all spaces, interior partitions, and other fixtures and improvements located within the boundaries of a Condominium Apartment are a part of the Apartment.

Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Condominium Apartment, but located outside the Apartment's boundaries, are Limited Common Elements allocated exclusively to that Apartment.

2.5 Inseparability of a Unit. An Owner's undivided interest in the General Common Elements shall not be separated from the Condominium Apartment to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Condominium Apartment even though the interest is not expressly mentioned or described in a deed or other instrument.

2.6 No Partition. The General Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the General Common Elements. Similarly, no action shall be brought for partition of a Condominium Apartment between or among the Owners thereof. Each Owner hereby expressly waives any and all such rights of partition he may have by virtue of his ownership of a Unit.

2.7 Separate Taxation. Each Condominium Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither The Building, The Property nor any use of the General Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Condominium Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

2.8 Limited Common Elements. Subject to the definition thereof, the Limited Common Elements shall be identified on The Map. A balcony, patio, front entry way or storage area which is accessible from, associated with and which adjoins a Condominium Apartment and the rear and side yards identified as Limited Common Elements on The Map shall without further reference thereto, be used in connection with such Condominium Apartment to the exclusion of the use thereof by the other Owners of the General Common Elements, except by invitation.

2.9 Certain Work Prohibited. No Owner shall undertake any work in his Condominium Apartment which would jeopardize the soundness or safety of The Project, reduce the value thereof or impair an easement or hereditament thereon or thereto. Structural alterations shall not be made by an Owner to The Building or in the water or gas pipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from The Building without the prior written consent of the Board of Directors first having been obtained.

2.10 Owners' Maintenance Responsibility. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring making up the finished surfaces of the perimeter walls, ceilings and floors within the Condominium Apartment and the Condominium Apartment's doors and windows. The Owner shall not be deemed to own lines, pipes, wires, conduits or systems which for brevity are hereafter referred to as "utilities" running through his Condominium Apartment which serve one or more other Condominium Apartments, except as a tenant in common with the other Owners. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board of Directors. Such right to maintain, repair, alter and remodel shall carry the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least equal value.

An Owner shall maintain and keep in good repair and in a clean, safe, attractive and sightly condition the interior of his Condominium Apartment, including the fixtures, equipment, and doors and windows thereof and the improvements affixed thereto, and such other items and areas as may be required in the Rules and Regulations. All fixtures and equipment installed within the Condominium Apartment commencing at a point where the utilities enter the Apartment shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of The Building or impair any easement or hereditament.

An Owner shall be responsible to maintain, repair and keep up in a neat and clean condition the yard, deck, and patio area, adjoining such Owner's Condominium Apartment, if any, which areas are shown on the Map as Limited Common Elements appurtenant to such Owner's Condominium Apartment. The maintenance and repair of an Owner's appurtenant Limited Common Element is that Owner's sole responsibility.

Any expense incurred by an Owner under this paragraph shall be the sole expense of such Owner. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Board of Directors may accomplish same and charge such Owner therefor as an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

2.11 Delegation of Use; Compliance. Any Owner may delegate his right of enjoyment of his Apartment and the General Common Elements and Limited Common Elements to members of his family, to his tenants, guests, invitees and licensees. All such persons shall be subject to this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association concerning such use. An Owner shall be fully responsible for the actions of the members of his family, tenants, his guests, invitees and licensees. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owner, or, in a proper case, by an aggrieved Owner. Failure to comply may subject the Owner to an assessment for damages in accordance with Paragraph 6.9 hereof.

2.12 Automobile Parking. Each Owner shall have a co-equal right to use the parking areas; provided however, that the Association shall maintain control thereof and shall have the right to assign and to reassign to each Owner a parking space or spaces; provided further however, that the provisions of this paragraph shall not in any way affect the ownership or use of a Garage Unit.

2.13 Mechanic's Lien Rights and Indemnification. Subsequent to the completion of The Project, no labor performed or materials furnished for use in connection with any Apartment with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any Owner not expressly consenting to or requesting the same or against any interest in the General Common Elements except as to the undivided interests therein appurtenant to the 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, or any part thereof, of any other Owner for labor performed or for materials furnished in work on the first Owner's unit. At the written request of any Owner, the Board of Directors shall enforce such indemnity by collection from the Owner of the Apartment on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs of collection incidental thereto and obtain a discharge of such lien. Such collection shall be made by an Individual Assessment against such Owner in accordance with Paragraph 5.3(c) hereof.

ARTICLE THREE: VARIOUS RIGHTS AND EASEMENTS

3.1 Owner's Rights in Limited Common Elements: Subject to the other provisions of this Declaration, each Owner, his family and such Owner's guests, shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on the Map as appurtenant to the Unit owned by such Owner.

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

3.3 Owner's Easement for Access, Support and Utilities. Each Owner shall have a non-exclusive easement for access between his Condominium Apartment and roads and streets adjacent to The Project. Each Owner shall have a non-exclusive easement in and over the General Common Elements, including the General Common Elements within the Condominium Apartment of another Owner, for horizontal and lateral support of the Condominium Apartment which is part of his Unit, and for utility service to the Condominium Apartment, including water, sewer, gas, electricity, telephone and television service.

3.4 Easements for Encroachments. If any part of the General Common Elements encroaches or shall hereafter encroach upon a Condominium Apartment, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Condominium Apartment encroaches or shall hereafter encroach upon the General Common Elements, or upon another Condominium Apartment, the Owner of that Condominium Apartment shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on a Condominium Apartment. Encroachments referred to herein include, but are not limited to, encroachments caused by error in The Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of The Project or any part thereof.

3.5 Easements in Condominium Apartments for Repair, Maintenance and Emergencies. Some of the General Common Elements are or may be located within a Condominium Apartment or may be conveniently accessible only through a particular Condominium Apartment. The Association, Managing Agent and each Owner shall have an easement, which may be exercised for any Owner by the Association or the Managing Agent, as his agent, for access through each Condominium Apartment and to all 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 thereon or accessible therefrom or for making emergency repairs

therein necessary to prevent damage to the General Common Elements or to another Condominium Apartment. Damage to the interior or any part of a Condominium Apartment resulting from the maintenance, repair, emergency repair or replacement of any of the General Common Elements, at the instance of the Association, shall be a Common Expense of all of the Owners. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of repairing such damage. In the event the Owner fails within a reasonable time upon proper notice to pay for the cost of the damages incurred, the Board of Directors may pay for said damages and charge the Owner responsible as an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

3.6 Easements Deemed Appurtenant: The easements, uses and rights herein created for an Owner shall be appurtenant to the Unit of that Owner and all conveyances or any other instruments affecting title to a Unit shall be deemed to grant and reserve the easements, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appear in any such conveyance.

ARTICLE FOUR: THE ASSOCIATION

4.1 General Purposes and Powers. The Association through its Board of Directors shall perform functions and manage The Project as provided in this Declaration so as to further the interests of all of the Owners of Units in The Project. It shall have all power necessary or desirable to effectuate such purposes.

4.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate of its authority to a Managing Agent for the Association.

4.3 ByLaws and Articles. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified by provisions of the Articles and ByLaws of the Association.

4.4 Membership. The Owner of a Unit shall automatically be a Member of the Association. Said membership is appurtenant to the Unit of said Owner and title to the ownership of the membership for that Unit shall automatically pass with fee simple title to the Unit. Each Owner of a Unit shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his Unit. If more than one person holds such interest or interests, all such persons shall be Members. Ownership of such Unit shall be the sole qualification for membership. Memberships in the Association shall be limited to the Owners of Units within The Project.

4.5 Voting Rights. Members will be entitled to one vote for each Unit in which they hold the interest required for membership by Paragraph 4.4. The vote for such Unit which is held by more than one Member may be exercised by any one of them, unless an objection or protest by any other holder of an interest in such Unit is made prior to the completion of the vote, in which case the vote for such Unit shall be exercised as the persons holding such interests shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any such Unit. Notwithstanding anything to the contrary provided for herein, however, until the Declarant has sold 80% of the Condominium Units, the Members of the Board of Directors of the Association shall be appointed by the Declarant, its successors or assigns, unless such right is relinquished earlier in any event not later than December 31, 1980.

4.6 Indemnification. The manager, employees of the Association, and each director and officer of the Association, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having acted as such upon behalf of the Association; provided that this

indemnification shall not apply if the said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided further that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled.

4.7 Certain Rights and Obligations of the Association.

a) Association as Attorney-in-Fact for Owners: The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the General Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with The Project upon its destruction, condemnation or obsolescence as hereinafter provided and to grant utility easements through any portion of the General Common Elements. The acceptance by any person of any interest in any Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate The Project and to perform all of the duties required of it.

b) General Common Elements: The Association shall provide for the care, operation, management, maintenance, repair and replacement of the General Common Elements, except as is provided for in Paragraph 2.10 herein. 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 the Condominium Apartments; keeping The Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the General Common Elements. The care, repair and maintenance of the Limited Common Elements' shall be the sole responsibility of the Owners of the Condominium Apartment to which such Limited Common Element is appurtenant.

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

d) Property of Association: The Association may pay for, acquire and hold 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 members of his family, guests and lessees may use such property. Upon termination of Condominium ownership of The Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interest in the General Common Elements. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Unit.

e) 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.

4.8 Certain Rights of the First Mortgagees.

(a) Notice. A First Mortgagee, upon written request by such First Mortgagee to the Board of Directors, shall receive any of the following:

- (i) Copies of budgets, notices of assessments, or any other notices provided for under this Declaration by the Association to the Owner of a Condominium Unit in which a First Mortgagee has a security interest.
- (ii) Financial statements of the Association which are prepared for the Association and distributed to its Members.
- (iii) Copies of notices of meetings of the membership and the right to be represented at any meetings by a designated representative.
- (iv) Notice of the decision of the Owners to make any material amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association.
- (v) Notice of commencement of any condemnation proceedings with respect to any part of The Project.
- (vi) Notice of any default which is not cured by the Owner of a Unit in which a First Mortgagee has a security interest within sixty (60) days.

(b) Form of Request. The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the

Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from the purported First Mortgagees of the same Condominium Unit, the Association shall honor the most recent request received.

(c) Books and Records. A First Mortgagee shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association upon reasonable notice.

(d) Restrictions. The prior written approval of all First Mortgagees will be required for any of the following:

- (i) Use of hazard insurance proceeds for losses to the improvements for other than repair, replacement or reconstruction of such improvements.
- (ii) Amending the Declaration which (i) changes the manner in which assessments are assessed against Owners, or (ii) amends this Section or any other provision which specifically grants rights to First Mortgagees hereunder.
- (iii) Partition or subdivision of any Condominium Unit.
- (iv) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the General or Limited Common Elements, except that the consent of the First Mortgagees shall not be required for action by the Board of Directors to grant easements for utilities and similar or related purposes.
- (v) By act or omission, seek to abandon or terminate the Condominium Project.

(e) Protection. No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Condominium Unit and listing the name or names of the owner or owners thereof and giving notice of such violation, breach or failure to comply. However, any purchaser on foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration.

4.9 Professional Management. Any agreement for professional management of The Project, or any other contract providing for services of Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

ARTICLE FIVE: ASSESSMENTS

5.1 Assessments. Each Owner of a Unit within The Project, shall be obligated to pay the Association certain assessments to be imposed by the Board of Directors from time to time as herein provided. Such assessments, together with interest and the cost of collection in the event of delinquency in payment as allowed in Paragraph 5.5 shall be the personal obligation of the person who was the Owner, or of the persons jointly and severally who were the Owners at the time when the assessment was made.

5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of The Project and the Members of the Association and in particular for the improvement and maintenance of the General Common Elements and the furnishings of common services to the Units, which may include, among other things, expenses of management; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common lighting and heating; water charges; trash collection, sewer service charges; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; and any other expenses and liabilities which may be incurred by the Board of Directors for the benefit of the Owners under or by reason of this Declaration. Such assessment shall include the establishment and maintenance of a cash reserve and a sinking fund for adequate reserve fund for the maintenance, replacement or repair of those elements of the General Common Elements which must be repaired on a periodic basis.

5.3 Basis of Assessments.

a) Common Expense Assessment: The expense of the maintenance, repair, replacement and operation of the General Common Elements, all of which expense shall take into account any sinking fund established for future expected expenditures shall be apportioned among all Owners according to each Owner's percentage of interest in and to the General Common Elements. The Limited Common Elements shall not be maintained as General Common Elements and the Owners having exclusive use thereof may be subject to Individual Assessments in the event the Owner fails to maintain his Limited Common Elements in a manner satisfactory to the Board of Directors in accordance with Paragraph 2.10 hereof.

b) Insurance Assessment: The Association shall assess against each Owner of a Unit located within The Project the cost of procuring and maintaining the insurance required by ARTICLE SEVEN hereof. The assessment to cover the cost of the insurance shall be paid by the Owners in the proportion which the gross square foot finished area within such Owner's Apartment bears to the total gross square foot finished area of all of the Condominium Apartments located within The Project.

c) Individual Assessments: The Board of Directors of the Association shall have the right to assess any Owner individually, amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 2.10, 2.13, 3.5. 6.3 and 6.9 hereof.

d) Fines: The Board of Directors shall have the right to assess a fine upon due notice and an opportunity to be heard against an Owner not exceeding \$50.00 for each violation of this Declaration, the Bylaws, the Rules and the Articles of Incorporation of the Association. Such fine may be assessed additionally for each day the violation continues after written notice thereof is given the Owner.

e) Levy of Assessments: During the first month of each calendar year, the Board shall determine the estimated annual assessment payable periodically during the year by each Owner; provided, however, that said assessments may be adjusted upon a finding of necessity by the Board, but no more than twice in any one year. As soon as practicable after the close of each calendar year, actual expenses shall be totalled and any overages or shortages of actual expenses and assessments made shall then be charged or credited to the Owner. Fines and Individual Assessments may be assessed at any time as required. Both assessments are exempt from any voting requirements for assessment required for other assessments called for under this Declaration.

f) Non-Exemption: No Owner shall be relieved from payment of any assessment or charge by waiver or suspension of the use of any of the General Common Elements or by the abandonment of his Unit.

5.4 Special Assessments. In addition to the assessments authorized above, the Board may levy Special Assessments for the purpose of defraying the cost of any construction or reconstruction, unexpected repairs or replacement of capital improvements, including the necessary fixtures and personal property related thereto. If any such total Special Assessment exceeds \$100/Unit per year, all Owners must be given due notice and an opportunity to be heard and such Special Assessment must have the assent of Owners representing an aggregate ownership interest of sixty per cent (60%) or more of the General Common Elements to be levied.

The limitation set forth above shall not apply to any expenditures made by the Board of Directors for the maintenance and repair of the General Common Elements as set forth in Paragraph 5.3 or for the repair in the event of damage, destruction and obsolescence as set forth in ARTICLE EIGHT.

5.5 Due Dates; Non-Payment of Assessments; Remedies of the Association.

(a) Fines, Individual Assessments and Special Assessments shall be due and payable on the date assessed.

(b) All other assessments shall be due and payable in advance on the first day of the period fixed for payment of the assessment which shall be at least quarterly and shall become delinquent unless paid thirty (30) days thereafter. The assessment shall be prorated if the ownership of a Unit commences on a day other than the first day of an assessment period. All unpaid assessments shall be subject to a late charge for non-payment as may be determined from time to time by the Board of Directors. If such assessments are not paid within thirty (30) days after the due date, they shall bear interest from the date of delinquency at the rate of twelve (12) percent per annum or other reasonable rate as fixed by the Board and uniformly applied.

Failure to make payment within thirty (30) days of the due date thereof also shall cause the full amount of such Owner's estimated annual assessment for the remainder of that year to become due and owing at once, at the option of the Board.

In the event it shall become necessary for the Board to collect any delinquent assessments, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay, in addition to the assessment, any late charge and interest herein provided, all costs of collection, including reasonable attorney's fees and costs incurred by the Association in such collection.

The omission or failure of the Board of Directors to fix the assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

(c) The Association is hereby granted a lien against the Owner's Unit for any payment or payments which the Owner fails to make as required by this Declaration; provided however, that (1) such lien shall be effective only upon recordation of a notice thereof in the office of the Clerk and Recorder of Boulder County, State of Colorado, and each Owner, by accepting a deed to his Unit, designates any one of the officers of the Association or its duly appointed Manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; (2) a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Colorado for foreclosure of mortgages on real property; and (3) such lien shall be subject and subordinate to and shall not affect the right of a holder of any recorded first mortgage now or hereafter placed on a Unit in good faith and for value. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Unit; provided

however, the lien shall also be subject and subordinate to the rights of any First Mortgagee of a Unit under any assignment of rents given in connection with a first deed of trust.

In the event of a foreclosure, the Owner shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure, and if after the filing of a foreclosure action, the Owner's Unit is left vacant, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without notice to the Owner.

In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his Unit and obtain judgment for the amount of the assessments due plus costs as herein provided. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.

(d) In the event an Owner is in default on any obligation secured by an encumbrance on his Unit, the Board, at its option, may pay the amount due on said obligation and file a lien against the Unit in the manner as provided for herein for unpaid assessments.

(e) Sale or transfer of any interest by an Owner shall not affect or release any lien granted the Association herein.

(f) In the case of the conveyance of a Unit pursuant to foreclosure proceedings or by deed in lieu of foreclosure, such transfer of title shall extinguish the lien for all unpaid assessments made by the Association becoming due before the date of transfer of title. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a Common Expense collectible from all the Owners as such, without prejudice to the right of the Association to recover such amount from the delinquent Owner.

ARTICLE SIX: RESTRICTIVE COVENANTS AND OBLIGATIONS

6.1 Use and Occupancy of Condominium Units. Each Owner shall be entitled to the exclusive ownership and possession of his Condominium Apartment. Each Condominium Apartment shall be used only for single family residential purposes as defined herein. No Condominium Apartment shall be used at any time for any business or commercial activity, except as follows: (a) Declarant may use any Condominium Apartment(s) as a model or sales unit until all Units owned by Declarant are sold; (b) the Owner thereof may lease or rent such Condominium Apartment upon such terms and conditions as the Owner may deem advisable, subject to the following: (i) Any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, the ByLaws of the Association, and the Rules; (ii) Only an entire Apartment may be leased, not portions thereof, and only for single family residential use, as defined by this Declaration. Any failure of a lessee to comply with the terms of this Declaration or ByLaws of the Association, or the Rules shall be a default under the lease enforceable by the Board of Directors.

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

6.3 Pets Within the Project. No animals, livestock, or poultry of any kind shall be raised, bred or kept within The Project, except that dogs, cats or other household animals may be kept thereon if they are not raised, bred, or maintained for any commercial purpose, and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of The Project. In the event a dog, cat or other household animal shall constitute a nuisance or inconvenience to a resident of The Project, then the Board of Directors of the Association, shall have the right to direct that the animal be permanently removed from The Project.

Dogs, cats and other household animals shall not litter the General Common Elements. It shall be the duty of the Association to keep the General Common Elements free from litter caused by and left by pets. The owners of pets known to be at large upon the General Common Elements shall be properly assessed by the Board of Directors for the cleanup expenses incurred, together with costs of collection to include reasonable attorneys' fees, if necessary, as an Individual Assessment against the owner of such pet causing such litter in accordance with Paragraph 5.3(c).

Dogs, cats and other household animals shall not be allowed to run at large within The Project, but shall be at all times on a leash while such animal is outside of his owner's unit. It shall be the duty of the Association, or its representative, to notify the City Dog Warden of pets found at large within The General Common Elements in violation of City Ordinances.

6.4 Nuisances. No structures of a temporary character, no trailers, campers or mobile homes shall be kept or stored on any portion of The Project at any time either temporarily or permanently, without the previous written consent of the Board of Directors. All clotheslines, equipment, wood piles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Units and streets. All rubbish, trash or garbage shall be regularly removed from The Project and shall not be allowed to accumulate thereon.

6.5 New Construction. No fences, hedges or walls shall be erected or maintained upon The Project, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors.

No new construction, exterior additions, alterations or decorating to any Apartment, nor changes in fences, hedges, walls, gates and other structures shall be commenced until the plans and specifications showing the nature, kind, shape, height, materials and location shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in The Project by the Board of Directors.

6.6 Use of General Common Elements. There shall be no obstruction of the General Common Elements, nor shall anything be stored on any part of the General Common Elements without the prior written consent of the Board of Directors. Nothing shall be altered, constructed on, or removed from, the General Common Elements except upon the prior written consent of the Board of Directors of the Association.

6.7 Prohibition of Certain Activities. Nothing shall be done or kept in any Apartment or in the General Common Elements or any part thereof which would result in the cancellation of the insurance on The Project or increase of the rate of the insurance on The Project over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors. Nothing shall be done or kept in any Apartment or in the General Common Elements which would be in violation of any statute, ordinance, regulation, or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on in any Apartment or in the General Common Elements, nor shall anything

be done therein which may be or may become an annoyance or nuisance to others. No sound shall be emitted on any part of The Project which is unreasonably loud or annoying.

6.8 Antennas. No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon The Project without approval of the Board of Directors.

6.9 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, lessees or family, loss or damage shall be caused to any person or property, including The Project or any Condominium Apartment therein, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.3(c).

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 6.9 shall be made by the Board of Directors and shall be final.

6.10 Restrictions on Signs. No signs or advertising of any nature shall be erected or maintained on any part of The Project without the prior written consent of the Board of Directors. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify The Project and the Units therein.

ARTICLE SEVEN: INSURANCE

7.1 Types of Insurance. The Board of Directors shall obtain and maintain at all times to the extent obtainable:

(a) Fire insurance with extended coverage and all risk endorsements, such insurance shall be written with companies licensed to do business in Colorado and having a BEST'S INSURANCE REPORT financial rating of a Class VI or higher. Said casualty insurance shall insure the entire Project and any property, the nature of which is a General Common Element (including all of the Condominium Apartments, fixtures therein initially installed or conveyed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by Owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee of a Unit, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of First Mortgagees as their interest, may appear.

(b) Public liability and property damage insurance in such limits as the Board may from time to time determine covering all claims for bodily injury or property damage arising out of or in connection with the ownership, operation, maintenance and other use of The Project.

(c) Any other insurance the Board of Directors deems appropriate to protect the Association or the Unit Owners.

7.2 Form. All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice of all of the insureds, including First Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments or premiums, shall be delivered to all First Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Unit Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Unit number designation) and First Mortgagee.

7.3 Proceeds Payable to the Association. Any loss covered by the policies under Paragraph 7.1 shall be adjusted with the Association, and the insurance proceeds for that loss shall be payable to the Association as attorney-in-fact. The Association shall hold such insurance proceeds in trust for the Owners and lien holders as their interests may appear. The proceeds shall

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be disbursed first for the repair or restoration of the damaged General Common Elements and Apartments. Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the General Common Elements and Apartments have been repaired or restored or The Project is terminated.

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

Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal property belonging to an Owner, and public liability coverage within each Condominium Apartment shall be the sole and direct responsibility of the Owner thereof. The Board of Directors and/or the Association shall have no responsibility therefor.

7.5 Replacement Cost Determined. Prior to obtaining any policy of fire insurance or renewal thereof, the Board shall obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than eighty percent (80%) of the full replacement cost. Determination of maximum replacement value shall be made annually by one or more written appraisals to be furnished by a person knowledgeable of replacement cost. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

7.6 Acts of Owners. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Any public liability insurance policy owned by the Association must contain a "Severability of Interest Endorsement".

ARTICLE EIGHT: DAMAGE, DESTRUCTION AND OBSOLESCENCE

8.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with The Project upon its destruction, repair, obsolescence and condemnation.

Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place and stead for the purpose of dealing with The Project upon its destruction, repair, obsolescence and condemnation as is herein-after provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted.

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

8.2 Reconstruction and Repair.

(a) Repair and reconstruction of The Project as used in the following paragraphs means restoring The Project to substantially the same condition in which it existed prior to the damage, with each Condominium Apartment and the General Common Elements and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless the Owners and all First Mortgagees agree not to rebuild in accordance with the provisions of Paragraph 8.2(e) below.

(b) In the event of damage or destruction to The Project to the extent of not more than sixty-six and two-thirds per cent ($66 \frac{2}{3}\%$) of the total replacement cost thereof, not including land due to fire or other disaster, the Association shall promptly repair and reconstruct the same in a workmanlike manner. The Association shall have full authority, right and power, as Attorney-in-Fact to cause the repair and reconstruction of The Project using the insurance proceeds. If the insurance proceeds are insufficient to repair and reconstruct The Project, such damage and destruction shall be promptly repaired and reconstructed by the Association as Attorney-in-Fact, using the proceeds of insurance and the proceeds of a Deficiency Assessment to be made against all of the Owners and their Units as more fully defined in Paragraph 8.2(f). The Association shall have full authority, right and power, as Attorney-in-Fact, to cause the repair or reconstruction of The Project using all of the insurance proceeds and such assessment.

(c) In the event of damage to or destruction to The Project to the extent of more than sixty-six and two-thirds per cent ($66 \frac{2}{3}\%$) of

the total replacement cost thereof, not including land due to fire or other disaster and insurance proceeds are sufficient to fully cover the costs of such repair or reconstruction, then the Association shall promptly repair or reconstruct The Project.

(d) In the event of damage to or destruction to The Project to the extent of more than sixty-six and two-thirds per cent (66 2/3%) of the total replacement costs thereof, not including land due to fire or other disaster and the insurance proceeds are not sufficient to fully cover the costs of such repair or reconstruction and the Association, upon due notice to all Owners and giving them an opportunity to be heard, shall adopt and record a written "Plan for Reconstruction" which plan has the unanimous approval of all First Mortgagees, then all of the Owners shall be bound by the terms and other provisions of such Plan and the Association shall promptly repair or reconstruct The Project unless Owners representing an aggregate ownership interest of eighty per cent (80%) or more of the General Common Elements adopt a "Declaration not to Rebuild" in which case The Project shall be sold, all in accordance with Paragraph 8.2(e) hereof. The Association shall have the right to use, in accordance with such Plan, all proceeds of insurance for such repair and reconstruction, as well as the proceeds of a Deficiency Assessment to be made against all of the Owners and their Units as more fully defined in Paragraph 8.2(f). The Association shall have full authority, right and power, as Attorney-in-Fact, to cause the repair or restoration of The Project using all of the insurance proceeds for such purpose notwithstanding the failure of any Owner to pay the Deficiency Assessment.

(e) In the event of damage to or destruction to The Project to the extent of more than sixty-six and two-thirds per cent (66 2/3%) of the total replacement costs thereof, not including land due to fire or other disaster and the insurance proceeds are not sufficient to fully cover the costs of such repair or reconstruction, and the Owners representing an aggregate ownership interest of eighty per cent (80%) or more of the General Common Elements, upon due notice to all Owners and giving them an opportunity to be heard, adopt and record a written "Declaration not to Rebuild", which Declaration has the unanimous approval of all First Mortgagees, the entire remaining Project shall be sold by the Association as Attorney-in-Fact for all Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and Bylaws.

The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear in the policy or policies, or in the event separate interests are not designated in the policy, then pro rata in the same proportion as the insurance assessment is made in accordance with Paragraph 5.3(b), and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be pro rata in the same proportion as the insurance assessment is made in accordance with Paragraph 5.3(b). 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 Paragraph 9.6 hereof. The provisions contained in this paragraph shall not hinder the protection given to a First Mortgagee under a mortgagee endorsement.

(f) The Deficiency Assessment made in connection with such repair and reconstruction as provided for in Paragraphs 8.2(b) and 8.2(d) shall be levied pro rata in the same proportion as the insurance assessment is made in accordance with Paragraph 5.3(b) and shall be due and payable as provided in such assessment but not sooner than thirty (30) days after written notice thereof. Such Deficiency Assessment shall not be considered a special assessment and such assessment shall be exempt from any special voting requirements of the Owners. Further assessments may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction. In the event amounts collected are in excess of the amounts required for such repair and reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the assessment was levied. The Deficiency Assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in Paragraph 5.5 hereof. Such lien shall have the same priority as that provided for in Paragraph 5.5. hereof. In addition thereto, the Association, as Attorney-in-Fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association as Attorney-in-Fact for the same purposes and in the same order as is provided in Paragraph 9.6 hereof.

8.3 Obsolescence and Reconstruction. The Owners representing an aggregate ownership interest of eighty per cent (80%) or more of the General Common Elements may agree, upon due notice to all Owners and granting them an opportunity to be heard, that the Units are obsolete and adopt and record a written "Plan for Renewal and Reconstruction", which Plan must have the unanimous approval of all First Mortgagees. Written notice of adoption of such a Plan shall be given to all Owners. The expense of renewal or reconstruction shall be payable by all of the Owners whether or not such Owner may have previously consented to such Plan. The assessment shall be levied, allocated and collected in the same manner as a Deficiency Assessment as provided for in Paragraph 8.2(f) hereof.

ARTICLE NINE: TERMINATION OF THE CONDOMINIUM PROJECT

9.1 Vote of Unit Owners and First Mortgagees. Except in the case of a taking of all the Units by condemnation or by fire or other casualty, The Project may be terminated only by agreement of the Owners representing an aggregate ownership interest of eighty per cent (80%) or more of the General Common Elements. Such an agreement must have the unanimous approval of the First Mortgagees.

9.2 Termination Agreement. An agreement of Owners to terminate condominium ownership must be evidenced by their execution of a termination agreement or ratifications thereof. If, pursuant to a termination agreement, the real estate constituting The Project is to be sold following termination, the termination agreement must set forth the terms of the sale. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of The Project is situated, and is effective only upon recordation.

9.3 Sale of The Project. The Association, on behalf of the Owners, may contract for sale of The Project, but the contract is not binding on the Owners until approved pursuant to Paragraphs 9.1 and 9.2. If the real estate constituting The Project is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interest in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be apportioned among the Owners in accordance with paragraph 9.5 of this Declaration. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his Unit. During the period in which the Owner has the right of occupancy, each Owner and his successors in interest remain liable for all assessments and other obligations imposed on Owners by the Declaration.

9.4 Project not to be Sold. If The Property constituting The Project is not to be sold following termination, title to The Property, upon termination, vests in the Owners as tenants in common in proportion to their respective General Common Element interests and liens on the Units shift accordingly. While the tenancy in common exists, each Owner and his successors in interest have an exclusive right to occupancy of the portion of The Property that formerly constituted his Unit.

9.5 Determination of Unit Owner's Interests. The respective interests of Owners referred to in paragraphs 9.3, 9.4, and 9.6 are as follows:

- (a) Except as provided in paragraph 9.5(b), the respective interests of Owners are the fair market values of their

Units, Limited Common Elements, and General Common Element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within thirty days after distribution by Owners representing an aggregate ownership interest of twenty-five per cent (25%) or more of the General Common Elements. The proportion of any Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Unit Owner's Unit and General Common Element interest by the total fair market values of all the Units and General Common Elements.

(b) If any portion of The Project is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all effected Owners shall be as their interests appear in the Association's Insurance Policy or in the event separate interests are not designated in such policy, then pro rata in the same proportion as the insurance assessment is made in accordance with Paragraph 5.3(b).

9.6 Distribution to Owners. Following termination of The Project, the proceeds derived from the sale shall be divided in proportion to the Owner's respective interests as provided in paragraph 9.5, and shall be used and disbursed by the Association, as Attorney-in-Fact, in the following order:

- (a) for payment of reasonable costs of sale incurred;
- (b) for payment of the balance of the lien of any first mortgage;
- (c) for payment of taxes and special assessment liens in favor of any assessing entity;
- (d) for payment of unpaid assessments;
- (e) for payment of junior mortgages and encumbrances in the order of and to the extent of their priority;
- (f) the balance remaining, if any, shall be paid to the Owner.

The proceeds of sale described in paragraph 9.3 and held by the Association as trustee are not assets of the Association.

ARTICLE TEN: CONDEMNATION

10.1 Consequences of Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of The Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Article shall apply.

10.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award" shall be payable to the Association as attorney-in fact.

10.3 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, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in accordance with paragraph 9.5; provided that if a standard different from the value of The Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.

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 9.6 of this Declaration.

10.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (a) 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 so allocated to the taking of or injury to the General Common Elements among Owners in proportion to their respective undivided interests in the General Common Elements, (b) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Unit involved, and (d) the amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective First Mortgagees and the Association.

10.5 Reorganization. In the event a partial taking results in the taking of a complete Condominium Apartment, the Owner thereof automatically shall cease to be a member of the Association, and that Unit's entire General Common Element interest, votes in the Association, and Common Expense liability are automatically reallocated to the remaining Units in proportion to their respective General Common Element interests before the taking and the Board of Directors shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of an Apartment remaining after part of an Apartment is taken under this paragraph is thereafter a General Common Element.

10.6 Condemnation of the General Common Elements. If part of the General Common Elements is acquired by Condemnation, the award must be paid to the Association. The Association shall divide any portion of the award not used for any restoration or repair of the remaining General Common Elements among the Owners in proportion to their respective General Common Element interests before the taking, but the portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective First Mortgagees and the Association.

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ARTICLE ELEVEN: DURATION AND AMENDMENTS

11.1 Duration and Declaration. All of the 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, revoked, or amended as hereinafter provided.

11.2 Amendments. Except in cases of amendments that may be executed by the Declarant pursuant to Paragraph 11.3, by the Board of Directors pursuant to Paragraphs 1.19 and 10.5 and except as limited by Paragraph 4.8 hereof, this Declaration, including the Map, may be amended only by written agreement by Owners representing an aggregate ownership of eighty percent (80%) or more of the General Common Elements. Such agreement must have the unanimous consent of each First Mortgagee.

No action to challenge the validity of an amendment adopted by the Association pursuant to this paragraph may be brought more than one year after the amendment is recorded.

Every amendment to the Declaration must be recorded in every county in which any portion of The Project is located, and is effective only upon recordation.

No amendment may increase the number of Units, or change the General Common Elements interests or the voting strength in the Association allocated to a Unit, or the uses to which any Apartment is restricted, without the unanimous consent of each Owner and each First Mortgagee.

11.3 Special Amendments. As long as the Declarant has the right to appoint the Board of Directors of the Association in accordance with Paragraph 4.5 hereof, the Declarant reserves and is granted the right and power to record Special Amendments to this Declaration which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make purchase, sell, insure, or guarantee first mortgages or deeds of trust covering Condominium Units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, lease or other instrument affecting a Condominium Unit, excepting any mortgage or deed of trust, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute and record Special Amendments.

No Special Amendment made by Declarant shall affect or impair the lien of the first mortgage or deed of trust upon a Condominium Unit or any warranties made by an Owner or First Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage or deed of trust on such Owner's Condominium Unit. Any such amendment must have the unanimous approval of the First Mortgagees.

ARTICLE TWELVE: GENERAL PROVISIONS

12.1 Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws, Rules and Regulations, and Articles of Incorporation of the Association will give rise to a cause of action in the Association by its Board of Directors and in any aggrieved Owner for the recovery of damages or injunctive relief, or both.

12.2 Invalidity. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

12.3 Claims. No claim or cause of action shall accrue in favor of any person for the failure of the Association or Declarant to enforce any provision hereof. This Paragraph may be pleaded as a full bar to the maintenance of any suit, action, or arbitration brought in violation of this paragraph.

12.4 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

12.5 Notices. Each Owner shall register his mailing address with the Association. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid to the last known address of the person who appears as an Owner on the records of the Association at the time of such mailing.

12.6 Attorneys' Fees and Costs. If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of any of the within covenants, conditions and restrictions of this Declaration, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

12.7 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

12.8 Gender. The use of the masculine gender in this Declaration

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 30th day of May, 19 79.


Ralph R. Hofele

Subscribed and sworn to before me this 30th day of May, 1979, by Ralph R. Hofele

My commission expires: January 31, 1983

Beverly J. Bertraw
Notary Public