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CONDOMINIUM DECLARATION  
FOR  
CHATEAU ACADIAN CONDOMINIUMS  
(A Condominium)

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CONDOMINIUM DECLARATION  
FOR  
CHATEAU ACADIAN CONDOMINIUMS

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CONDOMINIUM DECLARATION  
FOR  
CHATEAU ACADIAN CONDOMINIUMS

THIS CONDOMINIUM DECLARATION FOR CHATEAU ACADIAN CONDOMINIUMS (hereinafter "the Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 1983, by Colorado Condos, Inc., a Louisiana corporation doing business in the State of Colorado as Colorado Cajun Developers, Inc. (hereinafter "Declarant").

R E C I T A L S:

WHEREAS, Declarant is the owner of the following described real property situate in the County of Summit, State of Colorado (hereinafter "the Real Property"):

Lot 61, Key West Farms, P.U.D., a resubdivision of Tracts A, B, G, F and Lots 29 and 30, according to the plat recorded on November 3, 1980 at Reception No. 214367 of the real property records of the Clerk and Recorder of Summit County, Colorado.

AND WHEREAS, Declarant has prepared a plan of the surface of the ground of the Real Property, together with diagrammatic floor plans of the buildings and other improvements presently under construction thereon. Said plan envisions construction on the Real Property of two buildings, each containing eight (8) condominium units for a total of sixteen (16) condominium units; one building containing the Manager's Apartment, as hereinafter defined; and one sauna, one steamroom, one hot tub, one conference room, one lounge and one or more game rooms to be used only by the residents of Chateau Acadian Condominiums without charge in addition to the annual assessments specified in Article IX hereof;

AND WHEREAS, Declarant intends to provide for condominium ownership of the Real Property under the Condominium Ownership Act of the State of Colorado and to define the character, duration, rights, obligations and limitations of condominium ownership in Chateau Acadian Condominiums, and for such purpose executes this Declaration.

D E C L A R A T I O N

NOW, THEREFORE, Declarant hereby declares that Chateau Acadian Condominiums and every part thereof is and shall henceforth be owned, held, conveyed, devised, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform terms, covenants, conditions, restrictions, easements, uses, reservations, limitations and obligations, all of which are in furtherance of, and shall constitute, a general plan and scheme of condominium ownership and are also for the purpose of enhancing and protecting the value, desirability and attractiveness of Chateau Acadian Condominiums. Declarant further publishes and declares that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land encompassing the Real Property as covenants running with the land and equitable servitudes enforceable at law or in equity, as the case may be, and shall be a burden upon the land and be a burden upon and inure to the benefit of all parties having, acquiring or owning any right, title or interest in the Real Property or in any improvement located thereon, their

grantees, successors, heirs, personal representatives, devisees and assigns, however said interest is obtained.

## ARTICLE I

### DEFINITIONS

The following terms shall have the following meanings when used herein unless the context otherwise requires.

#### SECTION 1.01. Apartment Unit or Unit.

"Apartment Unit" or "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying all or part of one or more floors in a Building and bounded by the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors thereof as shown and numbered on the Condominium Map to be filed for record, together with the air space so encompassed, and together with all fixtures and improvements therein contained, but not any Common Elements, as herein defined, which may be within a Unit. The interior surfaces of a perimeter window or door means the points at which such surfaces are located when such windows or doors are closed; the physical perimeter windows and doors themselves are part of the Common Elements, as herein defined.

#### SECTION 1.02. Association.

"Association" shall mean the Chateau Acadian Condominium Association, the Colorado not for profit corporation described in Article VIII hereof, the Articles of Incorporation and Bylaws of which, along with this Declaration, shall govern the administration of the Project and the members of which shall be all of the Owners of Condominium Units.

#### SECTION 1.03. Board.

"Board" shall mean the Board of Directors of the Association.

#### SECTION 1.04. Building.

"Building" shall mean any and each of the building improvements constructed or to be constructed on the Real Property pursuant to this Declaration.

#### SECTION 1.05. Common Elements.

"Common Elements" shall mean all of the Project, except all Units, and shall include without limitation all recreational facilities, patio areas, private streets and sidewalks.

#### SECTION 1.06. Condominium Map.

"Condominium Map" or "Map" shall mean the map filed for record in the County of Summit, Colorado, which Map may be filed in whole or in sequential part, depicting thereon:

- (a) The legal description of the Real Property and a survey thereof;
- (b) The name and general location of the Project;
- (c) The linear measurements and location, with reference to the exterior



boundaries of said land, of any Building and all other improvements built on said land;

- (d) Floor plans and elevation plans of any Building showing the location, the designation and the linear dimensions of each Unit therein, and the designation of certain of the Limited Common Elements; and
- (e) The elevation of the unfinished interior surfaces of the floors and ceilings as established from a datum plan, and the linear measurements showing the thickness of the perimeter and common walls of any Building.

The Map, and any supplement thereto, shall contain the statements of (i) Declarant, submitting the Real Property to the provisions of this Declaration; and (ii) an engineer and a registered land surveyor certifying that the Map fully and accurately depicts the layout, measurements and location of all of the Buildings and improvements, the Unit designations, the dimensions of such Units and the elevations of the floors and ceilings. Declarant hereby reserves unto itself the right, from time to time, without the consent of any Owner or Mortgagee being required, to amend the Map and supplements thereto, to conform the Map to the actual location of any of the constructed improvements and to establish, vacate and relocate utility easements, access road easements and parking spaces.

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

**SECTION 1.07. Condominium Unit.**

"Condominium Unit" shall mean the fee simple interest and title in and to a Unit, together with an undivided interest in the Common Elements as set forth in Exhibit A attached hereto and incorporated herein by this reference, and all other rights and burdens created by this Declaration.

**SECTION 1.08. Declarant.**

"Declarant" shall mean Colorado Condos, Inc., a Louisiana corporation doing business in the State of Colorado as Colorado Cajun Developers, Inc., and its successors and assigns.

**SECTION 1.09. Declaration.**

"Declaration" shall mean this instrument as it may be amended from time to time.

**SECTION 1.10. Eligible Mortgagee.**

"Eligible Mortgagee" shall mean a Mortgagee, as hereinafter defined, who has furnished to the Association notice of its encumbrance in accordance with Section 14.03 of this Declaration.

SECTION 1.11. General Common Elements.

"General Common Elements" shall mean all Common Elements except all Limited Common Elements, and includes all parts of a Building or any facilities, improvements and fixtures which may be within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of a Building or any part thereof or any other Unit therein.

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 Real Property;
- (b) All foundations, columns, girders, beams and supports of a Building;
- (c) All deck or yard areas, gardens, porches, storage lockers or areas, balconies, patios, fireplaces, doors, windows and parking spaces or areas (subject to specific designation for individual Owner use as Limited Common Elements);
- (d) The exterior walls of a Building, the main or bearing walls within a Building, the main or bearing subflooring and the roofs of a Building;
- (e) All entrances, exits, vestibules, halls, corridors, lobbies, lounges, linen rooms, laundry rooms, locker rooms, stairs, stairways and fire escapes, if any, not within any Unit;
- (f) All utility, service and maintenance rooms, space, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, refrigeration, air conditioning, trash, incineration, and similar utility, service or maintenance purposes, including furnaces, tanks, pumps, motors, fans, compressors, flues, vents, ducts, and similar fixtures, apparatus, installations and facilities;
- (g) All recreational facilities;
- (h) The Manager's Apartment, as hereinafter defined (subject to specific designation for the exclusive use by the Managing Agent of the Project);
- (i) All streets and sidewalks not dedicated to the public; and
- (j) All other parts of the Project excluding the Units and the Limited Common Elements.

SECTION 1.12. Limited Common Elements.

"Limited Common Elements" shall mean those Common Elements designated herein or on the Condominium Map for exclusive use by Owners of less than all of the Units.

SECTION 1.13. Manager's Apartment.

"Manager's Apartment" shall mean that office and dwelling facility designated herein and on the Condominium Map as a General Common Element which may be assigned by the Board for the exclusive use of the Managing Agent of the Project as in Section 4.07 hereof provided.

SECTION 1.14. Managing Agent.

"Managing Agent" shall mean any person, firm or corporation employed by the Association pursuant to Section 8.05(c) of this Declaration and delegated any of the duties, powers or functions of the Association or the Board pursuant to said Section.

SECTION 1.15. Member.

"Member" shall mean any person or entity who is a member of the Association.

SECTION 1.16. Mortgage.

"Mortgage" shall mean any mortgage, deed of trust or other security instrument granted on a Condominium Unit or any part thereof to secure the payment of a debt, which mortgage, deed of trust or other security instrument is duly recorded in the real property records of Summit County, Colorado. Such term shall be restricted to first Mortgages, whether or not specified herein in connection with the use of the term. The term "Mortgage" shall not include mechanics' liens, judgments and other liens granted or imposed by operation of law.

SECTION 1.17. Mortgagee.

"Mortgagee" shall mean any person or entity which is the mortgagee or beneficiary under any Mortgage.

SECTION 1.18. Notice and Hearing.

"Notice and Hearing" shall mean ten (10) days' prior written notice given as in Section 18.02 of this Declaration provided and a hearing open to all Members at which the person to whom the notice is directed shall have the opportunity to be heard in person or by counsel at his expense.

SECTION 1.19. Owner.

"Owner" shall mean any person, firm, corporation, partnership, association or other legal entity, or any combination thereof, owning fee simple title to one or more Condominium Units, including Declarant; the term "Owner" shall not include the owner or owners of any lesser estate or interest and the term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

SECTION 1.20. Project.

"Project" shall mean the Real Property, as hereinafter described, together with all Buildings, structures and improvements located thereon.

SECTION 1.21. Real Property.

"Real Property" shall mean that certain real property situate in the County of Summit, State of Colorado, described above in the RECITALS.

SECTION 1.22. Successor Developer.

"Successor Developer" shall mean any person or persons or entity or entities who purchases all or substantially all of the Project and any adjacent lands from Declarant pursuant to a contract in which said person or persons or entity or entities represents that it will continue development of the Project in accordance with this Declaration and applicable governmental regulations.

ARTICLE II

FILING OF THE CONDOMINIUM MAP

The Condominium Map and any supplements thereto shall be filed for record in the real property records of the Clerk and Recorder of Summit County, Colorado.

ARTICLE III

CONVEYANCE AND DESCRIPTION OF A CONDOMINIUM UNIT

Every contract for the sale of a Condominium Unit written prior to the filing for record of the Condominium Map may legally describe a Condominium Unit by its identifying Unit number followed by the words "Chateau Acadian Condominiums." Upon the filing of the Condominium Map for record in Summit County, Colorado, such description shall conclusively be presumed to relate to the corresponding Unit reflected thereon.

After the Condominium Map shall have been filed for record in Summit County, Colorado, every contract for the sale of a Condominium Unit and every other instrument affecting title to a Condominium Unit may describe that Condominium Unit by the Unit number shown on the Condominium Map with the appropriate reference to the Condominium Map and to this Declaration, as each shall appear on the records of the Clerk and Recorder of Summit County, Colorado, in the following fashion:

Unit \_\_\_\_\_ as shown on the Condominium Map for Chateau Acadian Condominiums appearing in the records of the Clerk and Recorder of Summit County, Colorado, at Reception No. \_\_\_\_\_, and as defined and described in that Condominium Declaration for Chateau Acadian Condominiums, appearing in such records at Reception No. \_\_\_\_\_.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the

Common Elements, and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations of such ownership as described 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 right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include: a non-exclusive easement for ingress and egress throughout and for use of the Common Elements which are not Limited Common Elements; the right to the exclusive use of the appurtenant Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration. The undivided fee simple interest in the Common Elements, and any right of exclusive use of Limited Common Elements, appurtenant to any Condominium Unit shall be deemed conveyed or encumbered with the Condominium Unit, even though the legal description in the instrument conveying or encumbering said Condominium Unit may only refer to the title to that Condominium Unit. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration, without specific reference thereto.

#### ARTICLE IV

##### NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

###### SECTION 4.01. Estates of an Owner; Assessments, Debts and Obligations Assumed by an Owner.

The Project is hereby divided into Condominium Units, each consisting of a separate fee simple interest in a particular Unit and an undivided fee simple interest in the Common Elements as is set forth on Exhibit A attached hereto. The undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. Upon taking title to a Unit, the Owner assumes the responsibility of payment of assessments as herein provided, membership in the Association and is bound by the burdens set forth in this Declaration, including but not limited to the obligation to pay for negligent or willful or tortious damage to the Common Elements as set forth herein.

###### SECTION 4.02. Right to Combine Units.

Declarant reserves the right, and Owners upon obtaining written permission of the Board are granted the right, to combine physically the area or space of one Unit with the area or space of one or more adjoining Units. Such combinations shall not affect the designation nor prevent separate ownership of such Units in the future. Any walls or other structural separations between combined Units, or any space which would be occupied by such structural separation but for the combination of Units, shall remain Common Elements. Alterations to walls or other structural separations shall not alter the bearing capacities of such structures and shall not adversely affect other Owners.

###### SECTION 4.03. Title.

Title to a Condominium Unit may be held or owned by any entity or in any manner in which title to any other real property may be held or owned in the State of Colorado.

including, without limitation, joint tenancy or tenancy in common.

SECTION 4.04. Inseparability.

No part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be separated from any other part thereof during the period of condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Elements appurtenant to such Unit shall always be owned, conveyed, leased, devised, encumbered or otherwise affected only as a complete Condominium Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium Unit or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Condominium Unit together with all appurtenant rights created by law or by this Declaration.

SECTION 4.05. Partition Not Permitted.

The Common Elements shall be owned in common by all the Owners and there shall be no judicial or other partition of the Common Elements or any part thereof and no Owner may bring any action for partition thereof. Each Owner hereby expressly waives any and all such rights of partition he may have by virtue of his ownership of a Condominium Unit.

SECTION 4.06. Owners' Rights to Common Elements.

Subject to the limitations contained in this Declaration, each Owner shall have the nonexclusive right to use and enjoy the General Common Elements and each Owner shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on the Map or by deed as appurtenant to the Condominium Unit owned by such Owner. An Owner may use the General Common Elements and his appurtenant Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

SECTION 4.07. Manager's Apartment.

Notwithstanding the designation in this Declaration and on the Condominium Map of the Manager's Apartment as a General Common Element, the Board by resolution may designate the Manager's Apartment for the exclusive use and enjoyment of the Managing Agent. In the event of such designation, the Manager's Apartment shall be used by the Managing Agent to the exclusion of all Owners, except by invitation.

SECTION 4.08. Limited Common Elements.

Subject to the definition thereof, the Limited Common Elements shall be identified herein or on the Map and designated as appurtenant to a particular Condominium Unit, herein or on the Map. Any door, window, balcony, porch, patio or fireplace which is accessible from, associated with and/or which adjoins a Unit shall be a Limited Common Element appurtenant to such Unit. Any deck or yard areas, parking spaces, storage lockers and storage areas identified as Limited Common Elements on the Map and designated on said Map as appurtenant to a particular Condominium Unit, shall, without further reference thereto, be Limited Common Elements appurtenant to the designated Units. Such Limited Common Elements shall be used

in connection with the Unit to which it is appurtenant to the exclusion of the other Owners, except by invitation.

SECTION 4.09. Owners' Rights with Respect to Interiors.

Each Owner shall have the exclusive right to paint, tile, carpet, drape, wax, paper or otherwise finish or refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit.

SECTION 4.10. Ad Valorem Taxation.

Each Condominium Unit shall be carried on the tax books as a separate and distinct parcel for the purpose of all taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. The lien for such taxes, assessments and other charges 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.

SECTION 4.11. No Right of First Refusal.

No right of first refusal is established by this Declaration.

ARTICLE V

EASEMENTS

SECTION 5.01. Owners' Easements for Access, Support and Utilities.

Each Owner shall have a nonexclusive easement for access between his Unit and the roads and streets adjacent to the Project and the roads, streets and driveways in the Project, over and on the halls, corridors, stairs, walks, bridges and exterior access and other easements which are part of the General Common Elements. Each Owner shall have a nonexclusive easement in, on and over the General Common Elements, including the General Common Elements within the Unit of another Owner, for horizontal and lateral support of the Unit which is part of his Condominium Unit, for utility service to that Unit, including, but not limited to, water, sewer, gas, electricity, telephone and television service and for the release of smoke arising from any fireplace within a Unit through the flue leading therefrom.

SECTION 5.02. Easements for Encroachments.

If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of the same. Such encroachment shall not be considered to be an encumbrance either on the Common Elements or the Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the

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.

**SECTION 5.03. Easements of Access for Repair, Maintenance and Emergencies.**

Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a Unit. The Owners of other Units shall have an easement and the irrevocable right to have access, to be exercised only by the Managing Agent or the Board of Directors of the Association as their agent, to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom, for making improvements deemed necessary, or for making repairs or replacements pursuant to Section 8.06(a) below and at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. The Managing Agent or the Board shall also have such right independent of any agency relationship. Damage to the interior or any part of a Unit resulting from the inspection, maintenance, repair, emergency repair or replacement of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Managing Agent or the Board of Directors of the Association, shall be an expense of all of the Owners if such action was taken with respect to a Common Element or to protect a Common Element; provided, however, that if such damage is the result of a negligent or willful or tortious act of an Owner, or member of his family, or any of his agents, employees, invitees, licensees or tenants, then such Owner shall be solely responsible for the cost and expenses of repairing all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to the damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article IX hereof. No diminution or abatement of assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of inspections, repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority.

**SECTION 5.04. Emergency Easement.**

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

**SECTION 5.05. Association's Right to Use of Common Elements.**

The Association shall have a nonexclusive easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

**SECTION 5.06. Easements Deemed Created.**

All conveyances of Condominium Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements, uses and rights as are provided in this Declaration, even though no specific reference



to such easements, uses or rights appears in any such conveyance.

#### ARTICLE VI

##### MECHANIC'S LIEN RIGHTS

No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any rights to file a statement of mechanic's lien against the Unit or other property of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished, except that express consent shall be deemed to have been given by an Owner of a Condominium Unit to the Association in the case of emergency repairs. 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 request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and by obtaining discharge of the lien. Such collection shall be made by a special assessment pursuant to Section 9.07 hereof.

#### ARTICLE VII

##### USE OF CONDOMINIUM UNITS

###### SECTION 7.01. Use of Units.

Each Unit shall be used for residential purposes only, and no profession, trade or business of any kind may be carried on therein.

###### SECTION 7.02. Limitations on Use of Common Elements; Antennae Prohibited.

There shall be no obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Elements, including without limitation outside antennae, except upon the prior written consent of the Board.

###### SECTION 7.03. Prohibition of Damage and Certain Activities.

Nothing shall be done or kept in any Unit or in or on the Common Elements or any part thereof which might result in the cancellation of the insurance on the Project or any part thereof or which might result in an increase in the premiums of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in or on the Common Elements or any part thereof which would be improper or offensive, or in violation

of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body, or any rule or regulation adopted by the Association. No damage to, or waste of, any Unit or the Common Elements or any part thereof shall be committed by any Owner or any invitee or other person present or claiming by, through or under any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss resulting from any such damage or waste caused by him or his invitees or other persons present or claiming by, through or under him. 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. No noxious, destructive or offensive activity shall be carried on in any Unit or in or on the Common Elements or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully present in the Project.

SECTION 7.04. Household Pets.

No animals or pets shall be kept, even temporarily, within a Unit or within the Project without the prior written approval of the Board and in no event shall any animals or pets be kept, bred or raised within the Project for any commercial purpose. Dogs shall be leashed at all times when outside a Unit and the pet's owner shall confine his dog for excretion to such areas as may be designated by the Board. Each Owner shall be responsible for cleaning up after his pet. Pets constituting a nuisance may be ordered expelled from the Project by the Board of Directors of the Association. Each Owner shall be responsible for all damage to the Common Elements or to the Unit of any other Owner caused by any household pet possessed by such Owner.

SECTION 7.05. Maintenance of Interiors.

Each Owner shall keep the interior of his Unit, including, without limitation, interior walls, windows, glass, ceilings, floors and fixtures, and appurtenances thereto, in a clean, sanitary and attractive condition, and good state of repair. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel, the interior nonsupporting 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 subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit and the interior of the Unit's doors and windows, and any and all new additions to a Unit made by the Owner thereof. No Owner shall, however, make any changes or alterations of any type or kind to the exterior surfaces of the doors or windows to his Unit nor to any Common Elements (including, but not limited to, the exterior portions of his Unit). 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 Unit which serve one or more other Units, except as a tenant in common with the other Owners. Each Owner shall have the

obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in good repair and in a clean, safe, attractive and sightly condition the interior of his Unit, including the fixtures, doors and windows thereof and the improvements affixed thereto, and such other items and areas as may be required in the Bylaws. Also, an Owner shall maintain, clean and keep in a neat and clean condition the fireplace within his Unit. All fixtures, appliances and equipment installed within a Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof.

If any Owner fails to carry out or neglects the responsibilities set forth in this Section, the Association may fulfill the same and charge such Owner therefor. Any amount assessed against an Owner by the Association pursuant to this Section shall be in addition to any annual, long distance telephone or special assessment to which said Owner's Condominium Unit is subject, but the Association shall have all of the rights pertaining to a special assessment specified in Article IX hereof for such amount. Any expense incurred by an Owner under this Section, shall be the sole expense of said Owner.

**SECTION 7.06. Structural Alterations.**

No structural alterations to any Unit shall be made, and no plumbing, electrical or similar work within, to or on the Common Elements shall be done by any Owner without the prior written consent of the Board of Directors of the Association.

**SECTION 7.07. 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 Board. Notwithstanding the foregoing, the Association shall place on the Real Property at least one sign of reasonable size and dignified form to identify the Project and the Condominium Units therein.

**SECTION 7.08. Leasing of a Condominium Unit.**

The Owner of a Condominium Unit, including Declarant, shall have the right to lease his Condominium Unit. The terms of any such lease and lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration and to the provisions of the Articles of Incorporation and the Bylaws of the Association whether or not specifically stated in the lease. Any failure by the lessee to comply therewith shall be a default under the lease. If the Owner of a Condominium Unit wishes to use the services of a management firm to lease his Condominium Unit and the Association has designated a management firm to be used in such instances by means of a vote of the membership taken at any duly constituted regular annual or special meeting of the Members, then said Owner shall use only the services of such designated management firm. Any contract relating to leasing of a Condominium Unit entered into by and between an Owner and a management firm in violation of this Section shall be voidable by the Board.

**SECTION 7.09. Restrictions on Parking and Storage.**

No part of the Project, including the public streets and private streets, drives or parking areas, unless

specifically designated by the Board therefor, shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, truck or recreational vehicle, except as a temporary expedience for loading, delivery, emergency or similar activity (provided that this restriction shall not restrict trucks or other commercial vehicles within the Project which are necessary for the construction or maintenance of the Project).

SECTION 7.10. Payment of the Cost of Utilities and Services.

Each Owner shall be billed separately and shall pay as billed for all electricity, gas, water and sewer utilities and services supplied to said Owner's Unit and such amounts shall not constitute part of the assessments provided for in Article IX hereof.

ARTICLE VIII

THE ASSOCIATION

SECTION 8.01. Membership.

Every Owner of a Condominium Unit shall be entitled and required to be a Member of the Association, a Colorado non-profit corporation, which Association shall be organized and made effective by Declarant. Said membership shall be appurtenant to and may not be separated from the Condominium Unit of said Owner and the ownership of the membership for a Condominium Unit shall automatically pass with fee simple title to the Condominium Unit. An Owner shall be entitled to one membership for each Condominium Unit owned by him. No person or entity other than an Owner of a Condominium Unit may be a Member of the Association and the memberships in the Association may not be transferred except in connection with the transfer of a Condominium Unit.

SECTION 8.02. Voting Rights.

The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all of the Owners of Condominium Units with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote per Condominium Unit for each Condominium Unit in the Project owned by said Class A Member; provided, however, that only one (1) vote shall be permitted for each Condominium Unit even though said Condominium Unit may be owned by more than one Owner.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes per Condominium Unit for each Condominium Unit in the Project owned by said Class B Member, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever shall first occur:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) December 31, 1985.

SECTION 8.03. Organization and Purpose.

The Association is a nonprofit Colorado corporation created for the purposes, charged with the duties and invested with the powers prescribed by law or set forth in its Articles of Incorporation and Bylaws or in this Declaration.

SECTION 8.04. 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 each Owner in the 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 damage, destruction or obsolescence as hereinafter provided and to grant utility easements through any portion of the Common Elements. The acceptance by any person of any interest in any Condominium Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, but subject to the provisions of this Declaration regarding partition, obsolescence, casualty damage or destruction, condemnation and amendment and termination of the Declaration, unless Owners holding at least two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership then entitled to be cast under Section 8.02 above and at least fifty-one percent (51%) of the Eligible Mortgagees (based on one (1) vote for each first Mortgage) give their prior written approval, the Association shall not be empowered or entitled to:

- (a) By act or omission, seek to abandon or terminate the Project;
- (b) Change the pro rata interest or obligations of any individual Condominium Unit for the purpose of levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards;
- (c) Partition or subdivide any Condominium Unit;
- (d) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the General or Limited Common Elements (excluding the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements); and
- (e) Use hazard insurance proceeds for loss to the Project (whether Units or Common Elements) for other than repair, replacement or reconstruction thereof.

SECTION 8.05. Specific Powers of the Association.

The Association shall have all of the powers of a Colorado nonprofit corporation and all of the powers set forth in its Articles of Incorporation and Bylaws or in this Declaration. The Association shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of the State of Colorado, by its Articles of Incorporation or Bylaws or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association shall have the following powers and authority at all times:

- (a) Enforcement and Rights of Action. The Association may suspend any Owner's voting rights in the Association for a reasonable period of time if after Notice and Hearing such Owner unreasonably fails to comply with any obligation of such Owner under this Declaration. The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The Association also shall have the power and authority, in its own name and behalf or in the name and behalf of any Owner who consents thereto, to take judicial action against any Owner to enforce by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association or the decisions of the Association or the Board thereof made pursuant to such documents, or to obtain damages for noncompliance, all to the extent permitted by law. Any Eligible Mortgagee may request notice, as provided herein, of any default by the Owner of the Unit in which the Eligible Mortgagee has an interest in the Owner's obligations hereunder or under the Articles of Incorporation or the Bylaws which is not cured within sixty (60) days of notice to the Owner. Owners shall have a right of action against the Association for failure to comply with the provisions of this Declaration or the Articles of Incorporation or the Bylaws of the Association or with the decisions of the Association or the Board thereof made pursuant to such documents; provided, however, decisions of such bodies may be reversed or altered from time to time.

- (b) Fines. If any Owner, or any member of his family, or any of his guests, agents, employees, licensees, invitees or tenants, shall breach any covenant, condition or restriction contained in this Declaration and if such Owner shall not cease and remedy such breach (or cause such other person to cease or remedy such breach) after Notice and Hearing, the Association may levy a reasonable fine, not to exceed One Hundred Dollars (\$100.00) for each breach per month while the breach remains uncured, against such Owner and such Owner shall be personally liable to pay the same and the same shall become a lien against such Owner's Condominium Unit and payment may be enforced as is hereinafter provided for assessments.
- (c) Management and Other Services. The Association may obtain, enter into contracts with and pay for the services of any person or entity (the "Managing Agent") to manage its affairs, or any part thereof, to the extent deemed advisable by the Board, as well as such other personnel as the Board 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, by the Managing Agent or by any person or entity with whom it contracts. In addition to the foregoing, 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 also may arrange with others to furnish lighting, heating, water, trash collection, sewer service, snow removal and other common services to each Unit. The cost of such services shall be borne as provided in Article IX below. Further, the Association may provide, or arrange others to provide, maid and other services for and at the request of individual Owners. The charges and manner of payment for such services shall be as agreed upon by the individual Owner and the entity providing the services and shall be payable separately from any assessment provided hereunder; provided, however, that the Association shall have a lien as provided herein for assessments for any unpaid amounts resulting from such services.
- (d) Personal Property for Common Use. The Association may acquire, own and hold

for the use and benefit of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the proportion of their ownership interest in the Common Elements to the ownership interest of all Owners in the Common Elements. Such interest shall not be transferable except with the transfer of a Condominium Unit. The transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner shall have the right to use such property in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Condominium Unit.

- (e) Granting of Easements. The Association shall have the right to grant utility easements under, through or over the Common Elements as reasonably necessary to the ongoing development of the Project or for other purposes deemed reasonable by the Board, without any consent of Owners or Mortgagees being required. The Association shall be responsible for any damages incurred due to the granting of such easements.
- (f) Rules and Regulations. The Association may from time to time adopt, amend and terminate, and Owners shall comply with, reasonable rules and regulations governing the use of the Units, the General and Limited Common Elements and personal property for common use and covering any or all aspects of its functions hereunder, which rules and regulations shall be consistent with the rights and duties established in this Declaration and shall be uniform and non-discriminatory. Each Owner, by acceptance of his deed or other instrument of conveyance or assignment, agrees to accept and be bound by any such adopted rules and regulations.

SECTION 8.06. Specific Duties of the Association.

The Association shall have and perform each of the following duties for the benefit of the Members of the Association:



- (a) The Common Elements and Manager's Apartment. The Association shall, subject to the rights of the Owners set forth in Sections 4.09 and 7.05 above, be responsible for the exclusive management, control, operation, maintenance, repair, improvement and replacement of the Common Elements, together with all improvements located thereon (including furnishings and equipment related thereto) and together with the Manager's Apartment, and shall keep the same in good, clean, safe, attractive and sanitary condition, order and repair. The cost of such management, operation, maintenance, repair and improvement shall be borne as provided in Article IX hereof. The expenditure of funds by the Board of the Association for the above referenced activities out of the assessments collected from Owners for such expenses shall not require any approval of Owners.
- (b) Insurance. The Association shall obtain and keep in full force and effect at all times the insurance coverage outlined in Section 10.01 hereof. The premiums for such insurance shall be a common expense paid by the Association.
- (c) Assessments. The Association shall levy against and collect from the Owners annual assessments, long distance telephone assessments and special assessments and such other assessments and charges as are authorized in this Declaration.
- (d) Enforcement of this Declaration. The Association shall enforce, in its own behalf and in behalf of all Owners, all of the covenants, conditions and restrictions set forth in this Declaration, under an irrevocable agency (hereby granted) coupled with an interest, as beneficiary of said covenants, conditions and restrictions, and as assignee of Declarant; and it shall perform all other acts, whether or not anywhere expressly authorized, as may be reasonably necessary to enforce any of the provisions of this Declaration.
- (e) Audit. If directed by a vote of the Members at any duly constituted regular annual or special meeting of the Members, the Association shall provide an audit by an independent certified public accountant of its accounts and shall make a copy of such audit available to each Member during normal

business hours. The cost of any such audit shall be borne as provided in Article IX of this Declaration. Any Member may at any time and at his own expense cause an audit or an inspection to be made of the books and records of the Association by a certified public accountant provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Association.

- (f) Availability of Records and Current Copies of Documents. The Association shall make available to Owners, Mortgagees, prospective purchasers and prospective mortgagees, current copies of this Declaration, the Bylaws of the Association and other rules and regulations governing the Project and other books, records and financial statements of the Association, including the most recent annual audited financial statement, if any. "Available" shall mean available for inspection upon request during normal business hours.
- (g) Other. The Association shall carry out all duties of the Association set forth herein or in its Articles of Incorporation or Bylaws.

SECTION 8.07. Indemnification.

- (a) Actions. The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, employee, servant or agent of the Association, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court

in which such action, proceeding or suit was brought shall determine upon application that, despite the adjudication of liability and in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

- (b) Determination. The indemnification which the Association has elected to provide under Section 8.07(a) of this Article VIII (unless ordered by a court) shall be made by the Association only as authorized in a specific case upon a determination that the indemnification of the director, officer, employee, servant or agent is proper in the circumstances because he has met the applicable standards of conduct set forth in Section 8.07(a) of this Article VIII. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who are not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; provided, however, that if a director, officer, employee, servant or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 8.07(a) of this Article VIII or in defense of any claim, issue or matter therein, then to the extent that the Association has elected to provide indemnification, he shall automatically be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith without the necessity of any such determination that he has met the applicable standards of conduct set forth in Section 8.07(a) of this Article VIII.
- (c) Payment in Advance. Expenses incurred in defending a civil or criminal suit or proceeding may, in the discretion of the Board, be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board as provided in Section 8.07(b) of this Article VIII upon receipt of an undertaking by or on behalf of the director, officer, employee, servant or agent to repay such amount unless it shall be ultimately determined that he is entitled to be indemnified by the

Association as authorized in this Article.

SECTION 8.08. Amplification.

The provisions of this Article VIII are to be amplified by the Articles of Incorporation and the Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth herein. In case of conflict between the Declaration and the Articles of Incorporation or the Bylaws of the Association, the Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

ARTICLE IX

ASSESSMENTS

SECTION 9.01. Agreement to Pay Assessments.

Declarant, for each Condominium Unit owned by it within the Project, hereby covenants, and each Owner of any Condominium Unit by acceptance of a deed or other instrument of conveyance therefor, whether or not it be so expressed in the deed or other instrument of conveyance, is deemed to covenant and agree with each other and with the Association to pay to the Association.

- (a) Annual assessments or charges made by the Association for the purposes provided in this Declaration; and
- (b) Long distance telephone assessments or charges; and
- (c) Special assessments for capital improvements and other matters as provided in this Declaration.

Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article IX.

SECTION 9.02. Purpose of Annual Assessments.

The annual assessments against all Condominium Units levied by the Association through its Board of Directors shall be used exclusively for the purpose of performing the duties and obligations incurred by the Association pursuant to this Declaration and for the purpose of providing for the payment of all estimated expenses arising out of or connected with the routine maintenance and operation of the Common Elements (including the Manager's Apartment), the furnishing of common utilities and other services to the Units, and the establishment of an adequate reserve fund for periodic maintenance, repair and replacement of the Common Elements. Said estimated expenses may include but are not limited to: management fees; wages; insurance premiums; landscaping and care of grounds; telephone equipment fees and base fees for use of telephone lines and local telephone calls; electricity, lighting, heating, water and sewer utilities and services supplied to the Common Elements; snow and ice removal; trash and garbage collections; repairs, replacement and maintenance of the Common

Elements and personal property for common use; taxes and special assessments not separately assessed to Owners by taxing authorities; legal and accounting fees; payment of any deficit remaining from a previous period; the creation of a reasonable contingency fund; and any other expense or liability incurred by the Association under or by reason of this Declaration.

SECTION 9.03. Amount of Annual Assessments.

The amount of the annual assessment with respect to each Condominium Unit shall be based upon a budget developed by the Board or by the Managing Agent prior to the start of each fiscal year, which budget shall consist of advance estimates made by the Board or the Managing Agent, as the case may be, of amounts necessary to provide for the payment of all estimated expenses arising out of or connected with the purposes specified in Section 9.02 above. The amount of the annual assessment may be adjusted if deemed necessary by the Board or the Managing Agent, but no more than twice in any one year. The omission or failure of the Board to fix the amount of the annual assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

SECTION 9.04. Apportionment of Annual Assessments.

Any annual assessment assessed pursuant hereto shall be assessed to all Owners in proportion to their percentage interests in the Common Elements. There shall be no division of the assessment between General and Limited Common Elements and Owners having exclusive use of Limited Common Elements shall not be subject to any special charge or assessment therefor, except as provided hereafter for tortious, willful or negligent damage.

SECTION 9.05. Notice of Annual Assessments and Time for Payment Thereof.

The annual assessment with respect to each Condominium Unit shall be payable and collected in advance on a calendar month basis or such other reasonable basis as the Board may determine, but in no event more frequently than monthly or less frequently than yearly. Declarant shall not pay any annual assessments until such time as Declarant has sold sixty percent (60%) of the Condominium Units in the Project or December 31, 1985, whichever shall first occur, at which time Declarant shall commence payment of full annual assessments with respect to each Condominium Unit owned by it. All other Owners shall be subject to full annual assessments and shall commence payment thereof upon purchase of their Condominium Units. The first annual assessment shall be adjusted according to the number of months remaining in the Association's fiscal year. At least forty-five (45) days in advance of each annual assessment period, the Board of the Association shall fix the amount of the annual assessment against each Condominium Unit and shall give written notice to each Owner as to the amount of the annual assessment with respect to his Condominium Unit and as to the amount of each installment thereof. The installments of each annual assessment shall be due and payable on or before the first day of each calendar month or such other installment period adopted by the Board without further notice.

SECTION 9.06. Long Distance Telephone Assessments.

In addition to the annual assessments authorized above, the Association shall levy through its Board of Directors long distance telephone assessments for the purpose of paying the cost of long distance telephone calls placed from Condominium Units through the central telephone switchboard in the Project or charged to such Condominium Units. The Board shall maintain a separate account for each Condominium Unit of all long distance telephone calls made from or charged to that Condominium Unit, the costs thereof and all prepayments made to the Association against the account. Each month, or such other reasonable period as the Board shall determine, the Board shall prepare, on the basis of the aforesaid accounting, a statement for each Condominium Unit enumerating all long distance telephone calls placed from or charged to that Condominium Unit and the costs thereof and indicating all prepayments made and shall assess the Owner of that Condominium Unit any unpaid amount so determined as a long distance telephone assessment. Within seven (7) days after receipt by an Owner of the aforesaid statement, the Owner shall pay the amount due, if any, specified in said statement to the Association. From the amounts so collected, the Association shall pay the long distance portion of the telephone bill for the Project. The long distance telephone assessments provided for herein shall commence on all Condominium Units in the Project upon the conveyance of the first Condominium Unit to an Owner other than Declarant. Declarant shall pay full long distance telephone assessments with respect to each Condominium Unit owned by it until the conveyance of said Condominium Unit to an Owner other than Declarant. All other Owners shall be subject to full long distance telephone assessments and shall commence payment thereof upon the purchase of their Condominium Unit.

SECTION 9.07. Special Assessments.

In addition to the annual assessments and the long distance telephone assessments authorized by this Article, the Association may levy through its Board of Directors special assessments, payable over such periods as the Board of the Association may determine, for the purpose of defraying, in whole or in part, the cost of any emergency expenditure for unexpected repair or replacement of the Common Elements or other unexpected expense, for construction of capital improvements and such other special assessments as may be authorized by other Sections of this Declaration. If any such special assessment exceeds Five Thousand Dollars (\$5,000.00), the same shall have the assent of not less than fifty-one percent (51%) of the votes of the Class A Members and fifty-one percent (51%) of the votes of the Class B Members who are voting in person or by proxy at a meeting duly called for this purpose or at the regular annual meeting of Members, at which time not less than fifty-one percent (51%) of the votes of the Class A membership and fifty-one percent (51%) of the votes of the Class B membership shall be represented in person or by proxy. Written notice of any such meeting shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting and such notice shall set forth the purpose of the meeting. Any amounts assessed pursuant hereto shall be assessed to all Owners in proportion to their percentage interests in the Common Elements. Further, the Association may levy special assessments against one or more Condominium Units for amounts owing due to tortious, willful or negligent damage to the Common Elements by such Owner or related parties as provided herein, for the purpose of discharging any

unauthorized mechanic's lien against a Condominium Unit pursuant to Article VI above, or for amounts due pursuant to any arrangement for special services, and any such special assessment shall be fixed by the Board of the Association without a vote of the membership. Notice in writing of the amount of any special assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given; provided, however, that special assessments due to tortious, willful or negligent damages, due to any unauthorized mechanic's lien, or due to arrangement for special services may be made due upon receipt.

**SECTION 9.08. Assessment Reserve.**

Each Owner, other than Declarant, upon the purchase of a Condominium Unit, shall deposit and maintain with the Association an amount equal to two (2) times the amount of his monthly installment of the annual assessment. Said deposit shall be held by the Association without interest, to be used by the Board of Directors of the Association as a reserve for paying any delinquent installment of the annual assessment levied against such Owner, for purchasing equipment and supplies and for working capital. Payment of said deposit shall not relieve an Owner from paying the regular installments of his annual assessment as the same become due. Upon sale of a Condominium Unit, an Owner shall be entitled to credit from his grantee for any unused portion of the above deposit. The Association shall not be required upon any such sale of a Condominium Unit to refund any unused portion of such deposit to an Owner, but the Association shall cooperate in transferring any unused portion of such deposit by crediting the same to the account of the Owner's grantee on the Association's books.

**SECTION 9.09. Assessments for Damages.**

The cost of repair of damages caused by the negligent or willful or tortious act of an Owner, member of his family, or any of his guests, agents, employees, invitees, licensees or tenants shall be the responsibility of such Owner. The Association shall assess such Owner for such costs and shall have all of the rights pertaining to special assessments for such an assessment.

**SECTION 9.10. Late Charges and Interest.**

If any assessment or any installment thereof shall remain unpaid after the due date thereof, the Association may impose a late charge on the defaulting Owner in an amount established by the Board from time to time. In addition to the late charge set forth above, if any assessment or any installment thereof is not paid within ten (10) days after the due date thereof, the assessment or installment shall bear interest from the date it became due and payable until the date it is actually paid at the rate of eighteen percent (18%) per annum or such other reasonable rate fixed by the Board and uniformly applied. In the event it shall become necessary for the Board of Directors of the Association to collect any delinquent assessments or any installment thereof, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay in addition to the assessment and the late charge and interest herein provided, all costs of collection, including a reasonable attorney's fee, and all costs incurred by the Board in enforcing payment.

SECTION 9.11. Declarant's Obligation for Deficit.

Until such time as the Class B membership has ceased to exist pursuant to Section 8.02 hereof, Declarant shall pay to the Association within thirty (30) days of the end of each fiscal year of the Association a sum of money to cover any deficit in the Association's budget existing as of the fiscal year end date, which deficit, if any, shall be determined by the Board.

SECTION 9.12. Lien for Assessments.

All sums assessed to any Condominium Unit pursuant to this Article, together with interest and late charges thereon as provided in this Article and together with the costs of collection thereof, including reasonable attorney's fees, shall be secured by a lien on such Condominium Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Condominium Unit, voluntary or involuntary, whether granted by operation of law or otherwise, except only for:

- (a) Valid tax and special assessment liens on the Condominium Unit in favor of any government assessing authority; and
- (b) A lien for all sums unpaid on a first Mortgage duly recorded in the Summit County, Colorado, real property records, including all unpaid obligatory advances to be made pursuant to such Mortgage.

All liens other than those specified in subsections (a) and (b) above acquiring liens on any Condominium Unit after the Declaration shall have been recorded in the Summit County, Colorado, real property records, shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens. The sale or transfer of any Condominium Unit shall not affect the lien for said assessment charges, except that sale or transfer of any Condominium Unit pursuant to the foreclosure of any duly recorded first Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessment charges which became due prior to any such sale or transfer pursuant to foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure. No such sale or transfer pursuant to foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve any Condominium Unit from liability for or the lien of any assessment charges becoming due after such sale or transfer.

To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, date due, the amount remaining unpaid, the name of the Owner of the Condominium Unit, and the description of the Condominium Unit. Such notice shall be signed by the Association and may be recorded in the office of the Clerk and Recorder of Summit County, Colorado. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same



manner in which mortgages on real property may be foreclosed in the State of Colorado. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing a notice of lien and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium Unit which become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, encumber and otherwise deal with the Condominium Unit as the Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the real property records of the County of Summit, Colorado, at the Owner's expense, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Article, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

Each Owner hereby agrees that the Association's lien on a Condominium Unit for assessments as hereinbefore described shall be superior to the Homestead Exemption provided by Colo. Rev. Stat. Ann. § 38-41-201, et seq. (1973, as amended) and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Condominium Unit within the Project shall signify such grantee's waiver of the Homestead right granted in said sections of the Colorado statutes.

Declarant states in accordance with the requirements of the Colorado Condominium Ownership Act, that it is possible that liens other than mechanic's liens, assessment liens and tax liens, may be obtained against the Common Elements, including judgment liens and mortgage liens.

**SECTION 9.13. Personal Obligation of Owner.**

The amount of any assessment against any Condominium Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Condominium Unit. This personal obligation of an Owner for delinquent assessments shall not pass to successors in title or interest to said Owner's Condominium Unit unless assumed by them; provided, however, that any such sale or transfer of the Condominium Unit pursuant to foreclosure shall not relieve the purchaser or transferee from liability for, nor the Condominium Unit so sold or transferred from the lien of, any assessments becoming due after the date upon which such purchaser or transferee acquires title to or possession of the Condominium Unit, whichever shall first occur.

**SECTION 9.14. Statement of Account.**

Upon payment of a reasonable fee not to exceed Fifty Dollars (\$50.00) and upon written request of any Owner,

Mortgagee, prospective mortgagee or prospective purchaser of a Condominium Unit, the Association, by its Board of Directors or Managing Agent, shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to the subject Condominium Unit, the amount of the current annual assessment with respect to such Condominium Unit, the date that such annual assessment becomes due, and credit for advance payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of prospective mortgagees or prospective purchasers who rely thereon in good faith.

SECTION 9.15. Notice to Eligible Mortgagees.

Upon request of an Eligible Mortgagee and upon receipt by the Association of a reasonable fee not to exceed Five Dollars (\$5.00) for such service, the Association shall report to the Eligible Mortgagee of a Condominium Unit any unpaid assessments or charges or other defaults under the terms hereof which are not cured by said Eligible Mortgagee's mortgage within sixty (60) days.

ARTICLE X

INSURANCE

SECTION 10.01. Types of Insurance to be Carried by the Association.

The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in the State of Colorado. The premiums for such insurance shall be a common expense paid by the Association and included in the annual assessments as in Article IX hereof provided. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board may deem appropriate from time to time.

- (a) Casualty Insurance. A "Master" or "Blanket" insurance policy against loss or damage by fire and lightning, vandalism and malicious mischief, under extended coverage and all-risk endorsements. Said casualty insurance shall insure the entire Project and any property, the nature of which is a Common Element, together with all building service equipment and supplies contained therein, all fixtures therein and all personal property belonging to the Association, in an amount equal to the full replacement value (except land, foundation, excavation and other items normally excluded from coverage) without deduction for depreciation. Said insurance shall be contemporized annually in accordance with the currently determined maximum replacement value of the entire Project. Determination of the

maximum replacement value of the entire Project for insurance purposes shall be made periodically by one or more written appraisals, copies of which shall be furnished within thirty (30) days after receipt of such written appraisal to each Eligible Mortgagee who has made written request as provided below. All policies shall contain a standard noncontributory mortgage clause in favor of each first Mortgagee, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of such first Mortgagees as their interests may appear. In no event shall the insurance policy contain a coinsurance clause and, if reasonably available, such policy shall contain a stipulated amount clause, or determinable adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The Policy shall not contain any provision whereby: (i) assessment could be made against Owners or their Mortgagees, (ii) loss payments are contingent upon action by the Association's Board of Directors, policyholders or Members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Owners or their Mortgagees from collecting insurance proceeds. The Policy shall contain (i) a waiver of the right of subrogation against Owners individually, (ii) provision that the insurance is not prejudiced by any act or neglect of individual Owners not in the control of the Owners collectively, and (iii) provision that the policy is primary in the event the Owner has other insurance covering the same loss. Such provisions may be afforded by a "Special Condominium Endorsement" or its equivalent.

- (b) Comprehensive General Liability Insurance. Comprehensive general liability insurance covering all of the Common Elements and public ways within the Project which shall include bodily injury and property damage liability insurance, in such limits as the Association may from time to time determine, but not in an amount less than \$1,000,000.00 for bodily injury per occurrence. Coverage shall include, without limitation, insurance against liability for personal injuries, property damage, bodily injuries and deaths of persons arising from activities of the Association or

with respect to property under its jurisdiction, including without limitation the operation of automobiles owned by the Association, if any; against liability as may arise from activities in connection with the ownership, operation, maintenance and other use of the Project; and against legal liability arising out of suits related to employment contracts of the Association. All liability insurance shall name as separately protected insureds the Association, the Board of Directors and any Managing Agent of the Association, the officers of the Association, Declarant so long as Declarant is the Owner of any Condominium Unit in the Project, Eligible Mortgagees who have made a written request as provided below, and all the Owners. Each such policy shall also provide that each named insured may also be a claimant thereunder as against other named insureds.

- (c) Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase Workmen's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees, contractors and subcontractors of the Association as is necessary to comply with all applicable laws.
- (d) Other. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including, without limitation, plate or other glass insurance; fidelity bonds for coverage against dishonesty of officers, directors, the Managing Agent or employees or any other person handling funds of or administered by the Association, against destruction or disappearance of money or securities, and against forgery; and errors and omissions insurance with respect to the actions of the Board, officers and any Managing Agent of the Association.

SECTION 10.02. Form of Association Insurance.

The insurance obtained by the Association shall be carried in a form or forms naming the Association the insured, as trustee for the use and benefit of the Owners, and said policy or policies shall identify the interest of each Owner (Owner's name, Unit number and the appurtenant undivided interest in the Common Elements). Such policy or policies also shall provide that it or they cannot be cancelled or modified by either the insured or the insurance company until after ten (10) days' prior written notice is first given to the Association, to each Owner and to each Eligible Mortgagee as listed in

the policy or who has made a written request as provided below. The Association shall furnish to each Owner and to each Eligible Mortgagee, who has made a written request as provided below, a true copy of such policy or a Certificate identifying the interest of the mortgagor of said Eligible Mortgagee.

SECTION 10.03. Types of Insurance to be Carried by the Owner.

Owners may carry other insurance for their benefit and at their expense, but 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 improvements and fixtures installed by an Owner and furnishings, including draperies, carpeting, appliances, wallpaper, wall-paneling and other items of property belonging to an Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the Association shall have no responsibility therefor.

SECTION 10.04. Notice to Eligible Mortgagees.

Upon written request as herein provided, any Eligible Mortgagee shall be entitled to notifications and other information of the types above provided.

ARTICLE XI

CASUALTY DAMAGE OR DESTRUCTION AND OBSOLESCENCE

SECTION 11.01. Association as Agent.

Title to each Condominium Unit is hereby made subject to the terms and conditions of this Declaration, which bind Declarant and all subsequent Owners, whether or not it be so expressed in the deed or other instrument of conveyance by which any Owner acquires his Condominium Unit. Declarant and all Owners irrevocably constitute and appoint the Association their true and lawful agent in their name, place and stead for the purpose of dealing with the Project upon its damage, destruction or obsolescence as hereinafter provided. Acceptance by any grantee of a deed or other instrument of conveyance for a Condominium Unit from Declarant or an Owner shall constitute appointment of the attorney-in-fact herein provided. As attorney-in-fact, the Association 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 an Owner of a Condominium Unit which may be necessary or appropriate to exercise the powers herein granted.

SECTION 11.02. Casualty Damage or Destruction.

Repair and reconstruction of the improvements as used in this Section shall mean restoring the improvements to substantially the same condition in which they existed immediately prior to damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Except as herein otherwise provided, the proceeds of any insurance of the Association shall be available to the Association for the purpose of repair or reconstruction. Annual assessments levied pursuant to Article IX shall not be abated during the periods of insurance adjustment and repair and reconstruction. As soon as practicable after an event causing damage to or destruction of any part of the Project,

the Association shall obtain reliable and complete estimates of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

- (a) Sufficient Insurance Proceeds. Subject to the provisions of subsection (c) below, if the insurance proceeds with respect to that part of the Project damaged or destroyed are sufficient to pay the costs of repair and reconstruction thereof, the Association shall, as soon as practicable, diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with this Declaration and the original plans and specifications.
- (b) Insufficient Insurance Proceeds. Subject to the provisions of subsection (c) below, if the proceeds of any insurance collected are insufficient to pay the estimated or actual costs of repair or reconstruction of that part of the Project damaged or destroyed, the Association shall present to the Members a notice of special assessment for approval by the membership in accordance with Section 9.07 hereof, which special assessment shall be in an amount sufficient to provide funds to pay the costs of repair and reconstruction of that part of the Project damaged or destroyed. If said special assessment is approved by the Members, the Association shall levy and collect the special assessment as provided in Article IX hereof and thereafter shall diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. Such repair and reconstruction shall be substantially in accordance with this Declaration and the original plans and specifications. If the aforesaid special assessment is not approved by the Members, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by a vote of fifty-one percent (51%) of the votes held by Class A Members and fifty-one percent (51%) of the votes held by Class B Members who are voting in person or by proxy at a meeting duly called for this purpose or at the regular annual

meeting of Members, at which time not less than two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership then entitled to be cast under Section 8.02 above shall be represented in person or by proxy. Written notice of any such meeting shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting and such notice shall set forth the purpose of the meeting. Any such decision of the membership regarding the application of insurance proceeds must be approved by all Eligible Mortgagees. If the membership cannot agree on how the insurance proceeds should be applied after the calling of three (3) meetings for the purpose of making such decision, or if such decision is made by the membership but the Eligible Mortgagees do not unanimously approve the decision, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold and the sale and insurance settlement proceeds collected by the Association shall be distributed in the same manner as provided in Section 11.03(d) below in the event of sale of the Project due to obsolescence.

- (c) Decision Not to Rebuild. If the Board determines not to rebuild any part of the Project damaged or destroyed, or to rebuild facilities substantially different from those which were damaged or destroyed, it shall call a special meeting of the Members to consider such decision. Any such special meeting shall comply with the notice and quorum requirements set forth in subsection (b) above. If the Members, by two-thirds (2/3) of the total number of votes cast at such meeting, and all Eligible Mortgagees elect to ratify such decision, the Board shall act accordingly; but if the Members or the Eligible Mortgagees do not by such percentages elect to ratify such decision, the Association shall proceed to repair and reconstruct that part of the Project damaged or destroyed pursuant to subsection (a) or (b), as the case may be, of this Article XI.
- (d) Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and any amounts received from the special assessments provided for in Article IX

constitute a trust fund for the payment of the costs of repair and reconstruction after casualty. All money disbursed in payment for the costs of repair or reconstruction shall be deemed made from insurance proceeds until all insurance proceeds have been disbursed. If there is a balance of insurance proceeds after payment of all costs of such repair or reconstruction, such balance shall be apportioned among the Owners in proportion to their percentage interests in the Common Elements and distribution of said apportioned amounts by the Association shall be by checks payable jointly to the Owners and the first Mortgagees of their respective Condominium Units, if any. If there is a balance from special assessments, such balance shall be distributed to the Owners in proportion to the contributions each Owner made pursuant to Article IX of this Declaration.

(e) Negligent, Willful or Tortious Damage. Notwithstanding the foregoing, if the damage or destruction to all or a portion of the Project is caused by the negligent or willful or tortious act of an Owner, member of his family, or any of his agents, employees, invitees, licensees or tenants, the Association shall, as soon as practicable, diligently pursue to completion the repair and reconstruction of the portion of the Project damaged or destroyed and the costs of such repair and reconstruction shall be assessed to such Owner by the Association pursuant to Section 9.09 hereof and shall be added to and become part of the assessments to which such Owner's Condominium Unit is subject and shall be an addition to any annual, long distance telephone or special assessments to which such Owner's Condominium Unit is subject.

(f) Notice to Eligible Mortgagees. Upon written request as herein provided, any Eligible Mortgagee shall be entitled to timely written notice from the Association of any casualty loss which affects a material portion of the Project or which affects any Unit in which it holds an interest.

SECTION 11.03. Obsolescence.

(a) Adoption of a Plan. Owners holding ninety percent (90%) or more of the votes of the Class A membership and ninety percent (90%) or more of the votes of the Class B membership then



entitled to be cast under Section 8.02 above may agree that the Project is obsolete and adopt a written plan for renewal and reconstruction, which plan must have the unanimous approval of all Eligible Mortgagees at the time of the adoption of such plan. Written notice of adoption of such a plan shall be given to all Owners and Eligible Mortgagees. Such plan shall be recorded in the real property records of Summit County, Colorado.

- (b) Payment for Renewal and Reconstruction. The expense of renewal and reconstruction shall be payable by all of the Owners as special assessments against their respective Condominium Units. The special assessments shall be levied in advance pursuant to Article IX hereof, without the requirement of any vote of the Owners other than the vote by which the plan for renewal and reconstruction was adopted, and shall be allocated and collected as provided in that Article. Further levies may be made in a like manner if the amounts collected prove insufficient to complete the renewal and reconstruction. In the event amounts collected pursuant to this Section are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.
- (c) Dissent from the Plan. An Owner not a party to such a plan for renewal and reconstruction may give written notice of dissent to the Association within fifteen (15) days after the recording of such plan. The Association shall then give written notice of such dissent to all the Owners within ten (10) days after the expiration of such fifteen-day period. Within fifteen (15) days after the expiration of such ten-day period, Owners holding more than one-fourth (1/4) of the votes of the Class A membership and one-fourth (1/4) of the votes of the Class B membership then entitled to be cast under Section 8.02 above may cancel the plan by written instrument recorded in the real property records of Summit County, Colorado. If the plan is not cancelled, then the renewal and reconstruction of the Project shall proceed as provided above in subsections (a) and (b) of this Section 11.03.

(d) Sale of Obsolete Project. Owners holding ninety percent (90%) or more of the votes of the Class A membership and ninety percent (90%) or more of the votes of the Class B membership then entitled to be cast under Section 8.02 above may agree that the Condominium Units are obsolete and that the Project should be sold. Such an agreement must have the unanimous approval of every Eligible Mortgagee at the time such agreement is made. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold by the Association as attorney-in-fact for all the Owners free and clear of the provisions contained in this Declaration, the Condominium Map and the Articles of Incorporation and Bylaws of the Association, and any amendments or supplements thereto. The sale proceeds shall be apportioned among the Owners in proportion to their percentage interests 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 remain in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such account without contribution from one account to the other, in the following order:

(i) For payment of taxes and special assessment liens in favor of any assessing entity;

(ii) For payment of the balance of the lien of any first Mortgage;

(iii) For payment of unpaid assessments made pursuant to Article IX hereof;

(iv) For payment of junior mortgages and encumbrances in the order of and to the extent of their priority; and,

(v) The balance remaining, if any, shall be paid to the Unit Owner.

Any balance remaining on Units owned by the Association after disbursement for said items (i), (ii), (iii) and (iv) shall be distributed to the other Owners in proportion to their

percentage interests in the Common Elements computed by dividing an Owner's percentage interest in the Common Elements by the sum total of all percentage interests of Owners in the Common Elements, excluding from such total the percentage interests in the Common Elements which are attributable to the Units owned by the Association.

In the event any Eligible Mortgagee shall not agree to the sale of the Project, the Association shall have the option to purchase the Mortgage of such Eligible Mortgagee by payment in full of the amounts secured thereby if Owners holding three-fourths (3/4) of the votes of the Class A membership and three-fourths (3/4) of the votes of the Class B membership then entitled to be cast under Section 8.02 above are in agreement to do so. The Association shall obtain the funds for such purchase by special assessments under Article IX of this Declaration.

## ARTICLE XII

### 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 in eminent domain or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof (hereinafter called "condemned"), the following provisions shall apply:

- (a) **Proceeds.** All compensation, damages or other proceeds from the condemnation of all or any part of the Project, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association in trust to be distributed as provided below.
- (b) **Complete Taking.** In the event that the entire Project is condemned, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their percentage interests in the Common Elements, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree or otherwise, then, in determining such shares, the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principles 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. The Association shall distribute the Condemnation Award as soon as practicable thereafter to the parties in the shares so determined, such distribution to be made in the order of sub-paragraphs (i) through (v) set forth above in Section 11.03(d).

Any portion of the Condemnation Award allocable to Units owned by the Association remaining after payment of any mortgages or other liens, taxes or assessments thereon shall be distributed to the other Owners in proportion to their percentage interests in the Common Elements computed by dividing an Owner's percentage interest in the Common Elements by the sum total of all percentage interests of Owners in the Common Elements, excluding from such total the percentage interests in the Common Elements which are attributable to the Units owned by the Association.

(c) Partial Taking. In the event that less than the entire Project is condemned, 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 for the interest taken, damages to the remainder, and other proceeds, if any, and shall apportion the amount so allocated among the Owners, as follows:

(i) The total amount allocated to taking of or injury to the General Common Elements shall be apportioned among all Owners in proportion to their percentage interests in the General Common Elements;

(ii) The total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned;

(iii) The respective amounts allocated to the taking of or injury to a particular Unit, the Limited Common Elements attributable thereto, and/or attributable to improvements which an Owner has made within his own Unit shall be apportioned to the particular Owner involved; and,

(iv) 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.

If an allocation of the Condemnation Award is already established in the 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 in the manner set forth above in subsection (b).

- (d) Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a Member of the Association, and such Owner's interest in the Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and shall execute such documents as are necessary to reflect such termination. Thereafter, the Association shall reallocate the ownership interests in the Common Elements and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception, without any consent of Owners or Mortgagees being required.
- (e) Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 11.02 hereof.
- (f) Obsolescence by Reason of Partial Taking. Nothing herein shall preclude the Owners from proceeding under Section 11.03 hereof after partial condemnation if said Section 11.03 is then applicable.
- (g) Notice to Eligible Mortgagees. Upon written request as herein provided, any Eligible Mortgagee shall be entitled to timely written notice from the Association of any condemnation loss which affects a material portion of the Project or which affects any Unit in which it holds an interest.

ARTICLE XIII

ASSOCIATION UNITS

SECTION 13.01. Voting.

The Board of Directors of the Association shall have the right to exercise the votes which are attributable to any Condominium Units which are owned by the Association.

SECTION 13.02. Sale and Rental.

The Association shall sell any Condominium Unit owned by it to a suitable buyer at its fair market value as soon as practicable after the acquisition of such Condominium Unit. Such purchase price shall be obtained in cash and from the proceeds there shall first be paid taxes, mortgages or liens, and assessments on such Condominium Unit. Any remaining moneys shall be distributed to the Owners other than the Association in proportion to their percentage interests in the Common Elements computed by dividing an Owner's percentage interest in the Common Elements by the sum total of all percentage interests of Owners in the Common Elements, excluding from such total the percentage interests in the Common Elements which are attributable to Units owned by the Association. Prior to sale of such Condominium Unit, the Association shall use its best efforts to keep the same rented or leased and the rental or lease money shall be used to pay the mortgage, taxes and assessments against such Condominium Unit and any remaining moneys shall be distributed to Owners in the same manner as if it were sold under this Section 13.02.

ARTICLE XIV

MORTGAGEES

SECTION 14.01. Mortgaging a Condominium Unit -- Priority.

Any Owner shall have the right from time to time to mortgage or encumber his Condominium Unit by deed of trust, mortgage or other security instrument. The Owner of a Condominium Unit may create junior mortgages (junior to the lien, deed of trust or other encumbrance of the first Mortgagee) on his Condominium Unit on the following conditions:

- (a) That any such junior mortgagees shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for assessments and other obligations created by this Declaration and the Articles of Incorporation and the Bylaws of the Association; and
- (b) That the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvement upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were affected and placed upon the mortgaged premises by the Association. Such release shall

be furnished forthwith by a junior mortgagee upon written request of the Association, and if not furnished, may be executed by the Association as attorney-in-fact for such junior mortgagee.

SECTION 14.02. Protection of Encumbrancer.

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

SECTION 14.03. Notices.

Each Mortgagee upon acquiring an interest in a Condominium Unit or other property within the Project shall furnish to the Association notice of its encumbrance, specifying the Condominium Unit or other property in which it holds an interest, the name or names of the Owner or Owners of said Condominium Unit or other property, and the address of said Mortgagee. Thereafter, said Mortgagee shall be entitled to such notices as herein specified upon making written request therefor, specifying the address to which such notices are to be sent and referencing the Condominium Unit or other property in which it holds an interest. Unless such notice of encumbrance is furnished to the Association and such request is made, no Mortgagee shall be entitled to any notice provided for in this Declaration. Any notice from the Association to a Mortgagee referred to in this Section shall be in writing and may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered when deposited in the regular United States mail, postage prepaid, addressed to the Mortgagee at its address as provided above. This Declaration shall not be construed as requiring the Association or any Owner to give any notice, request or demand to any mortgagee except a first Mortgagee.

ARTICLE XV

SPECIFIC RIGHTS OF DECLARANT

SECTION 15.01. Transfer of Declarant's Rights.

Other than those rights and interests appurtenant to individual Units within the Project, any rights or interests received hereby to Declarant may be transferred or assigned in whole or in part by Declarant to any Successor Developer upon the recording of a written instrument duly executed by Declarant setting out such rights or interests and naming the transferee or assignee.

SECTION 15.02. Sale, Retention and Use of Units by Declarant.

Declarant contemplates sale of one hundred percent (100%) of the Condominium Units; however, Declarant may sell or lease Condominium Units as provided and permitted by this Declaration. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of any construction and/or sale of Condominium Units in the Project, upon such portion of the Project as Declarant may choose, employees in offices in the Project and such facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of Condominium Units, including a business office, storage area, construction yards, signs identifying the Project and advertising the sale of Units or in any way related to the business of Declarant, model Condominium Units, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Condominium Units. In addition, Declarant, its agents, employees and contractors shall have the right of ingress and egress over the General Common Elements as may be reasonably required with regard to the foregoing. Further, Declarant, its agents, employees and contractors shall have the right of ingress and egress in and through all Condominium Units and the Common Elements during the period of the construction and/or sale of the Condominium Units for the purpose of any required or desired refurbishment, construction, maintenance or repair to such Condominium Units or any Building or the Common Elements or any part thereof to the extent access is not available otherwise. Further, Declarant shall have the right of ingress and egress in and through the Common Elements for the purpose of making repairs pursuant to this Declaration or any contracts of sale made with purchasers of Units. Declarant shall have the obligation to restore any Unit or Common Element damaged or destroyed during its exercise of the aforesaid rights of access. Further, during the period of construction and/or sale of Condominium Units, Declarant shall have a blanket, nonexclusive easement in, upon, over, under, across and through the Common Elements, including the Limited Common Elements, for sanitary and storm sewers, water, gas, electric, telephone, cable television, and other utility services and for surface water runoff and drainage caused by natural forces and elements, grading, and/or improvements located within the Project or on adjacent lands owned by Declarant. No individual Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Project.



SECTION 15.03. Enforcement Powers.

Until such time as the Class B membership has ceased to exist pursuant to Section 8.02 hereof, Declarant shall have the right to enforce at law or in equity, including without limitation seeking injunctive relief, any Bylaws, rules or regulations adopted by the Association relating to the sale, lease or other disposition of Units or the use thereof.

SECTION 15.04. Approval of Amendments to Articles and Bylaws.

Until such time as the Class B membership has ceased to exist pursuant to Section 8.02 hereof, Declarant shall have the right to approve any amendment to the Bylaws, Articles of Incorporation or the rules and regulations of the Association, including any bylaw, rule or regulation interfering with or restricting the Declarant's use of Units owned by it as model Units for sales promotion and exhibition. No such amendment shall be effective without the prior written consent of Declarant.

SECTION 15.05. Interval Ownership.

Declarant, or a successor owner of a Condominium Unit, shall be permitted to sell interval estates, time shares, or fractional interests in a Condominium Unit. Declarant may file such supplemental declarations as may be required to implement the Interval Ownership of a Condominium Unit from time to time during the term of this Condominium Declaration. It is the intent of this paragraph to permit Interval Ownership within the Chateau Acadian Condominiums as provided by the applicable Colorado Statutes in force and effect from time to time.

ARTICLE XVI

REVOCAION OF OR AMENDMENT TO DECLARATION

SECTION 16.01. Revocation.

Except as provided in the event of obsolescence, damage, destruction or condemnation, this Declaration shall not be revoked unless all of the Owners and all of the Eligible Mortgagees unanimously consent and agree to such revocation by an instrument or instruments duly executed and recorded. Upon any such revocation, the Real Property shall be removed from the provisions of this Declaration. An Eligible Mortgagee, upon written request as herein provided, will be entitled to timely written notice of any revocation of this Declaration.

SECTION 16.02. Amendment.

This Declaration may be amended as hereinafter indicated.

- (a) During Period of Declarant Control.  
Until such time as the Class B membership has ceased to exist pursuant to Section 8.02 hereof, amendment of this Declaration shall require the written approval of Declarant and of Owners holding at least two-thirds (2/3) of the votes of the Class A membership then entitled to be cast. Amendment

of this Declaration shall be effected by recordation in the Summit County, Colorado, real property records of an instrument setting forth the amendment and including a statement of Declarant's consent thereto, executed and acknowledged by Declarant, and a statement executed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved in writing by Owners holding at least two-thirds (2/3) of the votes of the Class A membership then entitled to be cast. Evidence sufficient to establish the truth of the certification by the Association on any recorded amendatory instrument shall be retained by the Association in its permanent files.

- (b) After Period of Declarant Control. Upon the termination of the Class B membership pursuant to Section 8.02 hereof and thereafter, amendment of this Declaration shall require the written approval of Owners (including Declarant) holding at least two-thirds (2/3) of the total number of votes in the Association then entitled to be cast. Amendment of this Declaration shall be effected by recordation in the Summit County, Colorado, real property records of an instrument setting forth the amendment and including a statement executed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved in writing by Owners holding at least two-thirds (2/3) of the total number of votes in the Association then entitled to be cast. Evidence sufficient to establish the truth of the certification by the Association on any recorded amendatory instrument shall be retained by the Association in its permanent files.
- (c) Special Amendments. Notwithstanding and in addition to any other provisions contained in this Declaration, Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration at any time and from time to time that amends this Declaration (i) to comply with requirements of the Veterans Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions

similar to those currently performed by such entities, and/or (ii) to induce any agencies or entities to make, purchase, sell, insure or guarantee first Mortgages covering Condominium Units. A vote or consent of the Owners shall not be required for any such Special Amendment. Each Owner, by the acceptance of his deed or other instrument of conveyance for a Condominium Unit, acknowledges and consents to the reservation by Declarant of the right and power to make, execute and record Special Amendments as aforesaid.

- (d) Common Owners. For purposes of subsections (a) and (b) above, if title to any Condominium Unit is held jointly or in common by more than one person, the vote with respect to said Condominium Unit shall be held in the same manner. However, neither fractional votes nor split votes shall be allowed, and all joint or common Owners must approve in writing the proposed amendment or the vote with respect to such Condominium Unit shall not be counted.

#### ARTICLE XVII

##### PERIOD OF CONDOMINIUM OWNERSHIP

All of the provisions contained in this Declaration and the condominium ownership created by this Declaration shall continue until this Declaration and any amendments thereto are revoked, terminated or amended as in this Declaration provided.

#### ARTICLE XVIII

##### GENERAL PROVISIONS

SECTION 18.01. Compliance with Provisions of Declaration and Articles of Incorporation and Bylaws of the Association.

Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, damages or injunctive relief or both, costs and expenses of such proceedings and all reasonable attorneys' fees. Such action shall be maintainable as provided in Section 8.05(a) hereof.

SECTION 18.02. Registration of Owner's Mailing Address: Notices.

Each Owner shall register his mailing address with the Association as may be further provided in the Bylaws of the Association and all notices, requests or demands intended to be

served upon any Owner shall be sent to such registered address or to the Unit of such Owner in the Project if no address has been registered with the Association. Any notice referred to in this Section shall be in writing and may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered when deposited in the regular United States mail, postage prepaid, addressed to the Owner at his address as provided above. All notices, requests or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the Articles of Incorporation or the Bylaws of the Association.

SECTION 18.03. Warranty.

Declarant disclaims any intent to warrant or make representations except as expressly set forth in this Declaration.

SECTION 18.04. Severability.

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 the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

SECTION 18.05. Rule Against Perpetuity.

If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of the rule against perpetuity or some analogous statutory provision, then such provisions shall continue only for the period of twenty-one (21) years after the death of the last to die of the group composed of Eugene Thibodeaux, Lewis Bordelon and Charles J. Gattoni, Jr., and their now living descendants.

SECTION 18.06. Statute.

The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado and to all other provisions of law.

SECTION 18.07. Successors and Assigns.

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

SECTION 18.08. Captions.

The captions, titles and headings used in this Declaration are for convenience of reference only and shall not be considered in construing any provision of this Declaration.

SECTION 18.09. No Waiver.

The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

SECTION 18.10. Numbers and Genders.

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

SECTION 18.11. Effect of Provisions of Declaration.

Each provision of this Declaration shall:

- (a) Be deemed incorporated in each deed or other instrument by which any right, title or interest in the Project or in any Condominium Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument;
- (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;
- (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; and,
- (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.

SECTION 18.12. Violation of Law.

Any violation of any federal, state or local law, resolution or regulation pertaining to the ownership, occupancy or use of any property subject hereto is declared to be a violation of this Declaration and subject to all of the enforcement provisions set forth herein.

SECTION 18.13. Remedies Cumulative.

Each remedy provided by this Declaration is cumulative and not exclusive.

SECTION 18.14. Interpretation.

This Declaration shall be construed and governed under the laws of the State of Colorado.

THIS CONDOMINIUM DECLARATION FOR CHATEAU ACADIAN CONDOMINIUMS is executed as of the day and year first above written.

Attest: 

Title: Secretary

COLORADO CONDOS, INC.,  
a Louisiana corporation

By: 

Title: President

STATE OF COLORADO )  
CITY & ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 20th day of January, 1983, by Charles J. Gattoni, Jr., as President, and Michael G. Dehart, as Secretary, of Colorado Condos, Inc., a Louisiana corporation doing business in the State of Colorado as Colorado Cajun Developers, Inc.

Witness my hand and official seal.

My commission expires: October 6, 1985.

  
Lisa Holstein  
Notary Public

Address: 555 Seventeenth St.  
Denver, Colorado 80201

(Seal)

EXHIBIT A  
 TO  
CONDOMINIUM DECLARATION  
 FOR  
CHATEAU ACADIAN CONDOMINIUMS

<u>CONDOMINIUM UNIT</u>	<u>SQUARE FOOTAGE OF UNIT</u>	<u>PERCENTAGE UNDIVIDED INTEREST IN COMMON ELEMENTS</u>
101 .....	2,500	7.022%
102 .....	1,950	5.478%
103 .....	1,950	5.478%
104 .....	2,500	7.022%
105 .....	2,500	7.022%
106 .....	1,950	5.478%
107 .....	1,950	5.478%
108 .....	2,500	7.022%
109 .....	2,500	7.022%
110 .....	1,950	5.478%
111 .....	1,950	5.478%
112 .....	2,500	7.022%
113 .....	2,500	7.022%
114 .....	1,950	5.478%
115 .....	1,950	5.478%
116 .....	<u>2,500</u>	<u>7.022%</u>
TOTALS:	35,600	100.000%