

CONDOMINIUM DECLARATION

FOR

TANNENBAUM BY THE RIVER II

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS Management Actions, Incorporated of Colorado, the developer of Tannenbaum By The River II, called "DECLARANT", described on the attached Exhibit 'A', which by this reference is made a part hereof; and

WHEREAS DECLARANT desires to establish a condominium project under the Condominium Ownership Act of the State of Colorado; and

WHEREAS DECLARANT does hereby establish a plan for the ownership in fee simple of the condominium real property estates, subject to the taxes and assessments as set forth in Exhibit 'A' and reservations in this Declaration, consisting of the area or space contained in each of the air space units located in the building improvements and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property, which property is hereinafter defined and referred to as the general common elements;

NOW THEREFORE DECLARANT does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to DECLARANT, its successors and assigns, and any person or entity acquiring or owning an interest in the real property and improvements, their grantees and their heirs, executors, administrators, devisees, successors or assigns.

WITNESSETH:

I. DEFINITIONS.

1.1 Association: "Association" or "Association of Unit Owners" means the Association formed as a non-profit Colorado corporation bearing the name of this condominium project. The Articles of Incorporation and By-Laws of the

Association shall govern the administration of this condominium property. The members of the Association shall be all of the owners of the condominium units.

1.2 Building: "Building" means any building constructed on the real property which contains units.

1.3 Common Elements: "Common Elements" means all of the project except all units.

1.4 Common Expenses: "Common Expenses" means and includes (i) expenses of administration, operation and management, repair or replacement of the general common elements; (ii) expenses declared common expenses by the provisions of this Declaration or the By-Laws of the Association; (iii) all sums lawfully assessed against the general common elements by the Board of Managers of the Association; and (iv) expenses agreed upon as common expenses by the Association of unit owners; plus those expenses, assessments and charges which may be made, charged or assessed to the project under the terms, conditions and obligations of the Declaration of Restrictions, Covenants, Easements, Reservations and Architectural Control of the Breckenridge Company for Four Seasons of Breckenridge Village Filing No. 1, recorded in Book 202 at Page 326 of the records of Summit County, Colorado, as the same may be amended from time to time.

1.5 Condominium Unit: "Condominium Unit" means the fee simple interest and title in and to a unit together with the undivided interest in the general common elements and the appurtenant limited common elements (expressed as a fraction of the entire ownership interest in the common elements).

1.6 Declaration: "Declaration" means this Declaration and supplements thereto, if any.

1.7 General Common Elements: "General Common Elements" means those elements described in Section 38-33-103(3) C.R.S. 1973, as amended together with the real property described in Exhibit 'A' and the structural components of the buildings; such improvements, buildings or areas as are provided for community recreation, utility or for common use; service walks, and all other parts of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air space above such land, all of which shall be owned, as tenants in common, by the owners of the separate units, each owner of a unit having an undivided interest in such general common elements as is

provided hereinafter.

1.8 Limited Common Elements: "Limited Common Elements" means any common elements designated herein for the exclusive use by owners of particular condominium units. Structural separations between units or the space which would be occupied by such structural separations may become limited common elements for the exclusive use of the owner or owners of the units on either side thereof as provided in paragraph 3.2; "Right to Combine Units." Any balconies, porches, patios, or automobile parking spaces which are identified on the condominium map with the same number or other designation by which a unit is identified shall be limited common elements for the exclusive use of the owner of the unit bearing the same number or designation. Balconies, porches, patios, or automobile parking spaces which are not so identified shall be general common elements.

1.9 Map: "Map" means and includes "Condominium Map" or "Supplemental Map" and shall be that instrument reflecting the engineering survey of the land which depicts and locates thereon all of the improvements, the floor and elevation plans, and any other drawings or diagrammatic plans depicting a part of or all of the improvements and lands together with the legal description of the real property upon which the project is situate.

1.10 Mortgage: "Mortgage" means any mortgage, deed of trust, or other security instrument by which a condominium unit or any part thereof is encumbered.

1.11 Mortgagee: "Mortgagee" means any person named as the mortgagee or beneficiary under a deed of trust or mortgage under which the interest of any owner is encumbered, or any successor to the interest of such person under such deed of trust or mortgage.

1.12 Owner: "Owner" means any person or entity, including Declarant, at any time owning a condominium unit. 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.

1.13 Project: "Project" means the real property and all buildings and other improvements erected upon the real property.

1.14 Unit: "Unit" means an individual air space unit consisting of enclosed rooms, occupying part of a building and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors and built-in fireplaces, if any, along

the perimeter boundaries of the air space as said boundaries are shown on the condominium map together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be part of a unit insofar as they are necessary for the support or full use and enjoyment of another unit:

- a. Bearing walls.
- b. Beams.
- c. Girders.
- d. Columns.
- e. Floors.
- f. Ceilings.
- g. Roofs (except the interior surfaces thereof).
- h. Foundations.
- i. Space heating or colling equipment and water heating or colling equipment, if any.
- j. Tanks.
- k. Pumps.
- l. Pipes.
- m. Vents
- n. Ducts.
- o. Shafts.
- p. Flues.
- q. Chutes.
- r. Conduits.
- s. Wires and other utility installations, except the outlets thereof when located within the unit.

The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

## II. INTENTION AND PURPOSE..

2.1 Declaration: Declarant declares that the project and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner to the provisions of this declaration. Each and all of the provisions of this declaration are hereby declared to be in furtherance of the general plan and scheme of condominium ownership referred to herein and are further declared to be for the benefit of the project and every part thereof and for the benefit of each owner

2.2 Applicable Law: The applicable law of the condominium project is established under the Condominium Ownership Act of the State of Colorado as the same is in effect on the date of this declaration.

2.3 Plan for Ownership: Declarant hereby does establish a plan for the ownership in fee simple of the real property estates consisting of the area or space contained in each of the air space units in the building improvements and the co-ownership by the individual and separate owners thereof as tenants-in-common of all the remaining property, which property is referred to as the common elements, general and limited.

2.4 Covenants Running with the Land: All provisions of this condominium declaration shall be deemed to run with the land as covenants or as equitable servitudes as the case may be. These covenants shall be a burden and a benefit to declarant, its successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees or assigns.

### III. NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

3.1 Estates of an Owner: The project is divided hereby into condominium units. Each such unit consists of a fee simple interest in a unit and an undivided fee simple interest in the common elements in accordance with the attached Exhibit 'A', which interest is hereby declared to be appurtenant to such unit. Subject to the limitations contained in this declaration, any owner shall have the nonexclusive right to use and enjoy the general common elements, subject to reasonable rules and regulations. As an owner he shall have the exclusive right to use and enjoy any limited common elements which may be designated for such exclusive use.

3.2 Right to Combine Units: With the written consent of declaration or the written consent of the Board of Managers if declarant owns less than one third of the units, two or more units may be utilized by the owner or owners thereof as if they were one unit. To the extent permitted in the written consent any walls, floors or other structural separation between any two such units, or any space which would be occupied by such structural separations but for the utilization of the two units as one unit may, for so long as the two units are utilized as one unit, be utilized by the owner or owners of the adjoining units as limited common elements, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the project. At any time upon the request of the owner of one of such adjoining, combined units any opening

between the two units which, but for joint utilization of the two units, would have been occupied by a structural separation, shall be closed. Such closure shall be at the equal expense of the owners of each of the two units affected and the structural separations between the two units shall thereupon become limited common elements.

3.3 Title: Title to a condominium unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Colorado.

3.4 Inseparability: No portion of a condominium unit may be separated from any other portion thereof during the period of condominium ownership prescribed herein. Each unit and the undivided interest in the common elements appurtenant to such unit shall always be conveyed, devised, encumbered, and 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 construed 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.

3.5 Partition not Permitted: The common elements shall be owned in common by all the owners of condominium units and no owner may bring any action for partition thereof.

3.6 Map: The map may be filed for record in whole or in parts or sections, from time to time, as the stages of construction of the units and other improvements are substantially completed. Each section of the map filed subsequent to the first or initially filed map shall be termed a supplement to such map and the numerical sequence of such supplements shall be shown thereon. The map or any part or section thereof depicting units shall not be filed for record until the building in which the units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically. Each such map shall be filed for record prior to the conveyance of a condominium unit to a purchaser. Each such map shall depict and show at least the following: The legal description of the land and a survey thereof; the location of the building(s); the floor and elevation plans; the location of the unit within the building, both horizontally and vertically; the thickness of the common walls between or separating the units; the location of any structural components or supporting elements of a building located within a unit; and the unit designations and the building symbol. The map shall contain the certificate of a registered professional engineer, licensed architect or surveyor, or any of them, certifying that the map substantially depicts the location and the horizontal and vertical measurements of the building, the units, the unit designations, the

dimensions of the units, the elevations of the unfinished floors and ceilings as constructed, the building symbol, and that such map was prepared subsequent to substantial completion of the improvements. Each supplemental map and/or amendment shall set forth a like certificate when appropriate. In interpreting the map the existing physical boundaries of each separate unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the map, from time to time, to conform the same according to the actual location of any of the constructed improvements and to establish, vacate and relocate easements, access road easements and on-site parking areas.

3.7 Ad Valorem Taxation: Declarant shall give written notice to the Assessor of Summit County of the creation of condominium ownership in this property as provided by law so that each unit and the undivided interest in the general common elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation. 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.

3.8 Use and Occupancy: The units shall be used and occupied by the owner, his family and their guests, his business invitees and his tenants and their guests, and such use shall be limited to residential and recreational housing accommodation purposes only.

Declarant and declarant's employees, representatives, agents and contractors may maintain a business and sales office, construction facilities necessary or required during the construction and sales period. The Managing Agent may maintain an office in one of the units in the condominium project for the purpose of managing the condominium units within this condominium project.

3.9 Owner's Right with Respect to Interiors: Each owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors and doors within such boundaries.

3.10 Easements for Encroachments: If any portion of the general common elements encroaches upon a unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a unit encroaches upon the general common elements, or upon an adjoining unit or units, a valid easement

for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or on the units for purposes of marketability of title.

3.11 Easements of Access for Repair, Maintenance and Emergencies:

The owners and/or Association shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general common elements or to another unit. Damage to the interior or any part of a unit resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of emergency repairs within another unit, at the instance of the Association, shall be a common expense of all of the owners; provided, however, that if such damage is the result of the misuse or negligence of a unit owner, then such unit owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored substantially to the same condition in which they existed prior to the damage. All maintenance, repairs and replacements as to the general common elements, whether located inside or outside of units (unless necessitated by the negligence or misuse of a unit owner, in which case such expense shall be charged to such unit owner), shall be the common expense of all of the owners.

3.12 Description of Condominium Unit for Legal Documentation Purposes:

Every contract for the sale of a condominium unit written prior to the filing for record of the Map or Declaration may legally describe a condominium unit by its identifying unit designation, the building symbol, followed by the name of this condominium. The location of such condominium unit on the property described in Exhibit 'A' shall be depicted on the Map subsequently filed for record.

Every contract, deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit designation, the building symbol, followed by the name of this condominium, with further reference to the Map and Declaration filed for record. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the unit, but also the general common elements and the limited common elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress to an owner's unit and use of all of the limited common elements.

3.13 Owner's Right to Ingress and Egress and Support: Each owner shall have the right to ingress and egress over, upon and across the general common elements necessary for access to his unit, and to any limited common elements designated for use in connection with his unit, and shall have the right to the horizontal and lateral support of his unit, and such rights shall be appurtenant to and pass with the title to each condominium unit.

3.14 Association's Right to Use of Common Elements: The Association shall have a nonexclusive easement to make 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, including the right to construct and maintain in the general common elements maintenance, recreational and storage facilities for use by the Association and/or its members, and to assign particular storage facilities for use by the owners of particular units.

3.15 Easements Deemed Created: All conveyances of condominium units hereafter made, whether by the declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided for herein, even though no specific reference to such easements appears in any such conveyance. All conveyances of condominium units hereafter made, whether by declarant or otherwise, shall be construed to grant to transferee nonexclusive rights in that easement, even though no specific reference to that easement appears in such conveyance.

#### IV. DESCRIPTION OF A CONDOMINIUM UNIT

4.1 Method of Description: 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 number shown on the condominium map with the appropriate reference to the condominium map and to this declaration as each appears in the records of the County Clerk and Recorder of Summit County, Colorado, in the following fashion:

Condominium Unit \_\_\_\_\_, TANNENBAUM BY THE RIVER II, (a Condominium), according to the condominium map appearing in the records of the County Clerk and Recorder of Summit County, Colorado, in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_, and as defined and described in the Condominium Declaration for TANNENBAUM BY THE RIVER II, (a Condominium) appearing in such records, in Book \_\_\_\_\_ at Page \_\_\_\_\_.

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 on such ownership as described in this declaration.

4.2 Certificate of Identity: There shall be recorded from time to time a certificate of identity and the addresses of the persons then comprising the management body (Managers and Officers) together with the identity and address of the Managing Agent, if any. Such certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of time elapsed since date thereof. The first such certificate shall be recorded on or before ninety (90) days after recording this declaration.

## V. USE OF CONDOMINIUM UNITS

5.1 Owner's Maintenance Responsibility: For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile and floorings, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the unit, including unit doors and windows. The owner shall not be deemed to own lines, pipes, wires, flues, conduits or systems (which for brevity are herein and hereafter referred to as utilities) running through his unit which serve one or more other units except as a tenant-in-common with the other owners. Such utilities shall not be disturbed or relocated by an owner without written consent and approval of the Board of Managers. Such right to repair, alter and remodel is coupled with 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 repair the interior of his own unit, including the fixtures thereof. All fixtures and equipment installed within the unit commencing at a point where the utilities enter the unit shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. An owner shall also keep the balcony area appurtenant to his unit in a clean and sanitary condition. All other maintenance or repairs to any limited common elements, except as caused or premitted by the owner's negligence, misuse or neglect thereof, shall be a common expense of all of the owners.

5.2 Mechanics' Liens: 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 right to file a statement of mechanics' lien against the unit 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 and such materials shall have been furnished. Each owner shall indemnify and hold harmless each of the other owners from and against liability or loss arising from the claim of any lien against the condominium unit, or any part thereof, of any other owner for labor performed or for materials furnished in work on the first owner's unit. At the written request of any owner the Association shall enforce such indemnity by collecting from the owner of the unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment.

5.3 Use of Common Elements: There shall be no obstruction of the common elements, nor shall anything be kept or stored on any part of the common elements without the prior written consent of the Association, except as specifically provided herein or as may be delineated on the map for such purposes. Nothing shall be altered on, constructed in, or removed from the common elements except upon the prior written consent of the Association.

5.4 Prohibition of Damage and Certain Activities: Nothing shall be done or kept in any unit or in the common elements or any part thereof which would result in the cancellation of the insurance on the project or any part thereof or increase the rate 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 Association. Nothing shall be done or kept in any unit or in the common elements or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, restriction, covenant or other validly imposed requirement of any governmental body or the Breckenridge Company's declaration referred to in paragraph 1.4 hereof. No damage to or waste of the common elements or any part thereof shall be committed by any owner or any invitee of any owner, and each owner shall indemnify and hold the Association and the other owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the declarant shall not under any circumstances be deemed to be an invitee of any other owner. No noxious, destructive or offensive activity shall be carried on in any unit or in the common elements of 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 residing in the project.

5.5 Animals: The Association may by rules and regulations prohibit or limit the raising, breeding, or keeping of animals in any unit or on the common elements or any part thereof.

5.6 Rules and Regulations: No owner shall violate the rules and regulations for the use of the units and of the common elements as adopted from time to time by the Association.

5.7 Maintenance of Interiors: Each owner shall keep the interior of his unit including, without limitation, interior walls, windows, glass, ceilings, floors and permanent fixtures and appurtenances thereto in a clean, sanitary and attractive condition, and good state of repair.

5.8 Structural Alterations: No structural alterations to any unit shall be made, and no plumbing, electrical or similar work within the common elements shall be done by any owner without the prior written consent of the Association.

## VI. OWNERS OF THE ASSOCIATION

6.1 Membership: Every owner shall be entitled and required to be a member of the Association. If title to a condominium unit is held by more than one person, the membership related to that condominium unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which the title to the condominium unit is held. An owner shall be entitled to one membership for each condominium unit owned by him. Each such membership shall be appurtenant to the condominium unit upon which it is based and shall be transferred automatically by conveyance of that condominium unit. No person or entity other than an owner may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of a condominium unit; provided, however, that the rights of the membership may be assigned to a mortgagee as further security for a loan secured by a lien on a condominium unit. In the case of multiple ownership or ownership by a non-personal entity, the owners shall designate to the owner's Association one individual who will be qualified to vote at meetings of the Association and be counted toward a quorum at such meetings.

6.2 Voting Rights: The rights of all members of the Association shall be identical except with respect to voting. The number of votes to which each membership is entitled shall be the numerator of the fraction representing that member's undivided interest in the common elements.

6.3 Transfer: Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any owners as set forth herein.

## VII. OWNERS OF TANNENBAUM BY THE RIVER II

7.1 Governed by Association: The interest of all owners of condominium units shall be governed and administered by the Articles of Incorporation and By-Laws of Tannenbaum By The River II.

7.2 Membership in Association: An owner of a condominium unit upon becoming an owner, shall be a member of the Association and shall remain a member for the period of his ownership.

7.3 Managing Agent: The Association, by its first Board of Managers, shall obtain and pay for the services of a managing agent as is provided in the Articles of Incorporation and By-Laws of the Association.

## VIII. CERTIFICATE OF IDENTITY OF MANAGEMENT BODY TO BE RECORDED

There shall be recorded from time to time a Certificate of Identity and the addresses of the persons then comprising the management body (Managers and Officers) together with the address of the Managing Agent. Such Certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of time elapsed since date thereof. The first such certificate shall be recorded on or before ninety (90) days after recording this Declaration.

## IX. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

9.1 The Common Elements: The Association, subject to the rights of the owner set forth in this declaration, shall be responsible for and the exclusive management and control of the common elements and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each owner of a condominium unit shall keep the limited common

elements designated for use in connection with his unit, except any automobile parking space and structure, in a good, clean, sanitary and attractive condition. The Association shall be responsible for the maintenance and repair of exterior surfaces of the buildings, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs; the maintenance and repair of common elements, including utility lines and all other improvements or material located within or used in connection with the common elements; and the maintenance and repair of parking spaces and structures constituting part of the general or limited common elements. The Association shall clean and maintain in a high-quality manner any meeting or recreation rooms, storage rooms, toilets, and elevators constituting part of the general or limited common elements. The specification as set forth in this section and other sections of this declaration shall not be construed to limit its rights and duties with respect to other common elements as set forth in the first sentence in this paragraph.

9.2 Additions, Alterations and Improvements of General and Limited Common Elements: There shall be no additions, alterations or improvements of or to the general and limited common elements by the Association requiring an expenditure in excess of Two Hundred Dollars (\$200.00) per unit in any one calendar year without prior approval of a majority of the owners, and such expenditure(s) shall be a common expense. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any general or limited common elements or common personal property.

9.3 Assessment for Common Expenses: All owners shall be obligated to pay the assessments, either estimated or actual, imposed by the Board of Managers of the Association to meet the common expenses. The assessments shall be made according to each owner's percentage or fractional interest in and to the general common elements. The limited common elements shall be maintained as general common elements and owners having exclusive use thereof shall not be subject to any special charges or assessments for the repair or maintenance thereof. Assessments for the estimated common expenses shall be due in advance on the first day of each calendar quarter or more frequently as may be determined by the Board of Managers or the Managing Agent. The Managing Agent or the Board of Managers shall prepare and deliver or mail to each owner a statement for the estimated or actual common expenses.

In the event the ownership of a condominium unit, title to which is derived from declarant, commences on a day other than the first day of the assessment period, the assessment for that period shall be prorated. The assessments made shall be based upon the cash requirements deemed to be such

aggregate sum as the Managing Agent, or if there is no Managing Agent, then the Board of Managers of the Association, shall from time to time determine is to be paid by all of the condominium unit owners, including declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations and improvements of and to the general common elements, which sum may include, but shall not be limited to, expenses or management; taxes and special assessments until separately assessed; premiums for fire insurance with extended coverage and vandalism and malicious mischief with endorsements attached issued in the amount of the maximum replacement value of all of the condominium units (including all fixtures, interior walls and partitions, decorated and finished surfaces of perimeter walls, floors and ceilings, doors, windows, and other elements or materials comprising a part of the units); casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash and garbage collections; wages; common water and sewer charges; legal and accounting fees; management and rental fees; expenses and liabilities incurred by the Managing Agent or Board of Managers on behalf of the unit owners under or by reason of this Declaration and the By-Laws of the Association; for obligations of the Association arising from the Declaration of the Breckenridge Company referred to in paragraph 1.4 hereof; for any deficit remaining from a previous period; the creation of a reasonable contingency, reserve, working capital and sinking funds as well as other costs and expenses relating to the general common elements and operation of the Association. The omission or failure of the Board of Managers to fix the assessment for any period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay the same. The Association may require each owner to deposit and maintain with the Association an amount equal to one quarterly estimated assessment for use as working capital.

9.4 Owner's Personal Obligation for Payment of Assessments: The amount of the common expenses assessed against each condominium unit shall be the personal and individual debt of the owner thereof. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit. Both the Board of Managers and the Managing Agent shall have the responsibility to take prompt action to collect any unpaid assessment which remains unpaid more than fifteen (15) days from the date due for payment thereof. In the event of default in the payment of the assessment, the unit owner shall be obligated to pay interest at the rate of twelve percent (12%) per annum on the amount of the assessment from due date thereof, together with all expenses, including attorney's

fees, incurred together with such late charges as provided by the By-Laws of the Association. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

9.5 Assessment Lien: All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit shall constitute a lien on such unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the unit in favor of any assessing unit, and all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien the Board of Managers of the Managing Agent shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice shall be signed by one of the Board of Managers or by one of the officers of the Association or by the Managing Agent and shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado. Such lien shall attach from the due date of the assessment. Such lien may be enforced by the foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such proceedings the owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, and in the event of foreclosure proceedings, all additional costs, all expenses and reasonable attorney's fees incurred. The owner of the condominium unit being foreclosed shall be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the condominium unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any encumbrancer holding a lien on a condominium unit may pay, but shall not be required to pay, any unpaid common expenses payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit, for the amounts paid of the same rank as the lien of his encumbrance without the necessity of having to record a notice or claim of such lien. Upon request of a mortgagee, the Association shall report to the mortgagee of a condominium unit any unpaid assessments remaining unpaid for longer than twenty-five (25) days after the same are due; provided, however, that a mortgagee shall have furnished to the Managing Agent or to the Board of Managers notice of such encumbrance. The recorded lien may be released by recording a Release of Lien to be signed by an officer of the Association or by the Managing Agent on behalf of the Association.

9.6 Liability for Common Expense Upon Transfer of Condominium Unit is Joint: Upon payment to the Managing Agent, or if there is no Managing Agent, then to the Board of Managers of the Association, of a reasonable fee not to exceed Twenty-five Dollars (\$25.00), and upon written request of any owner or any mortgagee or prospective mortgagee of a condominium unit, the Association, by its Managing Agent, then by the financial officer of the Association, shall issue a written statement setting forth the amount of the current monthly assessment and the date that such assessment becomes due, credit for any advanced payments of common assessments, for prepaid items, such as insurance premiums, but not including accumulated amounts for reserves or sinking funds, if any, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be compiled with within twenty (20) days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the rights of the person requesting such statement. The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the unpaid common assessments up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee not to exceed Twenty-five Dollars (\$25.00), as is provided hereinabove, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent, or if there is no Managing Agent, then from the Board of Managers of the Association, setting forth the amount of the unpaid assessments, if any, with respect to the subject condominium unit, the amount of the current monthly assessment, the date that such assessments become due, and credits for any advanced payments of common assessments, prepaid items, such as insurance premiums, which statement shall be conclusive upon the Association. Unless such request for such a statement shall be complied with within twenty (20) days after such request, then such requesting grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for any unpaid assessments against the subject unit. The provisions set forth in this paragraph shall not apply to the initial sales and conveyances of the condominium units made by declarant, and such sales shall be free from all common expenses to the date of conveyance made or to a date as agreed upon by declarant and declarant's grantee.

9.7 Personal Property for Common Use: The Association may acquire and hold for the use and benefit of all 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 same proportion as their respective interests in the common elements. Such in-

terest shall not be transferable except with the transfer of a condominium unit. A 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 may 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 interest in such personal property associated with the foreclosed condominium unit.

9.8 Rules and Regulations: The Association may make reasonable rules and regulations governing the use of the units and of the common elements, which rules and regulations shall be consistent with the rights and duties established in this declaration and the Declaration of the Breckenridge Company referred to in paragraph 1.4 hereof. Such rules and regulations may include, without limitation:

(1) Regulations with respect to use of any automobile parking spaces which constitute general common elements, and

(2) Assignment of particular portions of storage areas within the common elements for exclusive use by owners of particular condominium units.

The Association may suspend any owner's voting rights in the Association during any period or periods during which such owners fails to comply with such rules and regulations, or with any other obligations of such owner under this declaration. The Association may also take judicial action against any owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

9.9 Implied Rights: The Association may exercise any other right or privilege given to it expressly by this declaration or by law, and every other 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.

9.10 Miscellaneous Services: The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the project or the enforcement of

this declaration. The Association may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services to each unit.

9.11 Personal Liability of Purchaser for Assessments: A purchaser of a condominium unit shall be jointly and severally liable with the seller for all unpaid assessments against the condominium unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

#### X. ASSOCIATION AS ATTORNEY-IN-FACT

10.1 Appointment of Association as Attorney-in-Fact: This declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction, for repair, reconstruction or obsolescence.

Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the declarant or from any owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the property upon its destruction or obsolescence as is hereinafter provided.

10.2 Authority of Attorney-in-Fact: As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of a condominium unit owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) to substantially the same condition in which they existed prior to the damage, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacements unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction,

and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty percent (60%) of all of the condominium units (the whole property), not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvement(s) using all of the insurance proceeds for such purpose notwithstanding the failure of an owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 9.5. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of a delinquent owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this paragraph. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eight (8%) percent per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For payment of taxes and special assessment liens in favor of any assessing entity and the customary expense of sale;
- (2) For payment of the balance of the lien of any first mortgage;
- (3) For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (5) The balance remaining, if any, shall be paid to the

condominium unit owner.

(c) If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if such damage is more than sixty percent (60%) of all the condominium units (the whole property), not including land, and if the owners representing an aggregate ownership interest of fifty-one percent (51%) or more of the general common elements do not voluntarily, within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire remaining premises shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this declaration, the map and By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each owner's percentage interest in the general common elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the condominium units. Each such account shall be in the name of the Association, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account the Association, as attorney-in-fact, shall forthwith use and disburse the total amount (of each) of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the condominium unit represented by such separate account. Each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of this paragraph.

**10.3 Plan for Reconstruction:** If the owners representing an aggregate ownership interest of fifty-one percent (51%), or more, of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and

power, as attorney-in-fact, to cause the repair or restoration of improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided for assessment liens. In addition thereto, the Association as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner failing or refusing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent (10%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of paragraph 10.2.

10.4 Renewal and Reconstruction: The owners representing an aggregate ownership interest of eighty percent (80%), or more, of the general common elements are obsolete and adopt a plan for the renewal and reconstruction, which plan has the unanimous approval of all first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that such unit shall be purchased by the Association for the fair market value thereof. The Association shall then have thirty (30) days (thereafter) within which to cancel such plan. If such plan is not cancelled, the condominium unit of the requesting owner shall be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such a person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire.

The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their expenses and fees of such appraisers shall be borne equally by the Association and the owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of paragraph 10.2 except as modified herein.

10.5 Sale of Obsolete Units: The owners representing an aggregate ownership interest of eighty-five percent (85%), or more, of the general common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this declaration, the map and the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of paragraph 10.2.

10.6 Personal Property for Common Use: The Association, as attorney-in-fact for all of the owners, may acquire and hold for the use and benefit of all of the condominium unit owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the condominium unit owners in the same proportion as their respective interests in the general common elements, and such interest therein shall not be transferable except with a conveyance of a condominium unit. A conveyance of a condominium unit shall transfer to the grantee ownership of the grantor's beneficial interest in such property in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the 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.

## XI. INSURANCE

11.1 Title Insurance and Public Liability Insurance: The Board of Managers or Managing Agent shall obtain and maintain, to the extent obtainable, the following insurance: (i) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the entire condominium improvements (including furniture, furnishings or other personal property supplied by or installed by unit owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation, and which shall contain a standard mortgage clause in favor of each mortgagee of a condominium unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however to the loss payment provisions in favor of the Board of Managers hereinafter set forth in paragraph X; (ii) public liability insurance in such limits as the Board of Managers may from time to time determine, covering each member of the Board, the Managing Agent and each unit owner. Such public liability claims of one insured against the other. Initially, such public liability insurance shall be in a single limit of \$1,000,000.00 covering all claims for bodily injury or property damage arising out of one occurrence and in the limit of \$500,000.00 for each occurrence; (iii) plate or other glass insurance; (iv) workmen's compensation insurance; (v) such other insurance as the Board of Managers may determine.

All policies of public liability insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least ten day's prior written notice to all of the insured, including mortgagees. Duplicate originals of all policies and renewals thereof together with proof of payments of premiums shall be delivered to all mortgagees at least ten days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the condominium unit owners, which policy or policies shall identify the interest of each condominium unit owner (owner's name, unit number and building designation).

Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Managers shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the entire condominium improvements, without deduction for depreciation, for the purpose of determining the amount of

the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than ninety (90) percent of the full replacement cost.

11.2 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 in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

11.3 Fidelity Insurance: The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

11.4 Furnishing Insurance and Liability Insurance Coverage Within Each Unit: Insurance coverage on furnishings and other items of personal or other property belonging to an owner and public liability coverage within each unit shall be the sole and direct responsibility of the unit owner thereof, and the Board of Managers, the Association and the Managing Agent shall have no responsibility therefor.

## XII. CONDEMNATION

12.1 Consequences of Condemnation: If at any time or times during the continuance of the condominium ownership pursuant to this declaration, all or any part of the project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

12.2 Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

12.3 Complete Taking: In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The condemnation award shall be apportioned among the owners in proportion to the respective amounts originally paid to declarant for the purchase of the condominium units, exclusive of the amounts paid for personal property, 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 principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in paragraph 10.5 of this declaration.

12.4 Partial Taking: In the event that less than the entire project is taken or 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, damages, or other proceeds, and shall apportion the amounts so allocated among the owners as follows: (a) the total amount allocated to taking of or injury to the common elements shall be apportioned among owners in proportion to their respective undivided interests in the common elements, (b) the total amount allocated to severance damages shall be apportioned to those condominium units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular unit and/or improvements as owner has made within his own unit shall be apportioned to the particular unit involved, and (d) 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 negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective owners and their respective mortgagees.

12.5 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. Thereafter the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration at its inception and shall submit such reallocation to the owners of remaining units for amendment of this Declaration.

12.6 Reconstruction and Repair: Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified herein in cases of casualty damage or destruction.

### XIII. AUTOMOBILE PARKING FACILITIES

All automobile parking facilities with the exception of the underground parking facility, the designating parking units of which will be permanently transferred to the respective unit owners, shall be under the control of the Association, provided, however, that the Association by its' President or other executive officer shall cause to be assigned to the owners of a condominium unit such additional parking space on the condominium project, other than the underground parking facility, which may be available.

### XIV. GENERAL RESERVATIONS

Declarant reserves the right to establish easements, reservations, exceptions and exclusions consistent with the condominium ownership of the condominium project and for the best interests of all of the condominium unit owners, including Declarant, in order to serve the entire condominium project. Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, Declarant reserves the right to exercise the rights, duties and functions of the Board of Managers of the Association until all of the condominium units have been sold. During such period of development and sale, the monthly assessment for common expenses shall be based upon the estimate of the actual cost excluding therefrom any estimated amount for contingencies, reserves or sinking funds, and Declarant shall pay its pro rata share thereof for those condominium units which have been completed, are ready for occupancy and are depicted on the Map or section thereof which has been filed for record.

### XV. RIGHT OF FIRST REFUSAL

15.1 Right of First Refusal by Owners: In the event any owner of a condominium unit other than the Declarant shall wish to sell, lease, or rent a condominium unit and shall have received a bona fide offer therefor from a prospective purchaser, lessee or tenant, the remaining unit owners shall be given written notice thereof together with an executed or machine copy of such offer. Such notice and copy thereof shall be delivered to the Board of Managers who shall notify each of the owners of such notice and offer. One or more of the unit owners, acting individually or through another owner or owners, shall have the right to purchase, lease or rent the subject condominium unit upon the same terms and conditions set forth in the offer; provided that during the twenty (20) day period immediately following the notice, written notice of such election to purchase, lease or rent is given to the selling, leasing or renting

owner and a matching down payment or deposit is paid to an escrow agent. Closing shall take place within thirty (30) days thereafter. The right of first refusal herein provided shall not apply to leases, subleases or tenancies having a term of less than six (6) months, but any such lease or tenancy shall not be renewable nor extended except by compliance with the provisions herein. In the event any owner other than the Declarant shall attempt to sell, lease or rent his condominium unit without affording to the other owners the right of first refusal herein provided, such sale, lease or rental shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser, lessee or tenant who shall be subject to eviction and removal, forcibly or otherwise, with or without process of law. The subleasing or sub-renting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under and by the provisions contained in this Declaration shall continue, notwithstanding the fact that he may have leased or rented said interests as provided herein. In no case shall the right of first refusal reserved herein affect the right of an owner to subject his condominium unit to a bona fide trust deed, mortgage or other security instrument. The failure or refusal by the owners to exercise the right to so purchase, lease or rent shall not constitute or be deemed to be a waiver of such right to purchase, lease or rent when an owner receives any subsequent bona fide offer from a prospective purchaser, lessee or tenant. The right of first refusal, as provided herein, shall extend and run for the period of the lives of THOMAS J. PHELAN, JR., and DONALD P. UHL, and the survivor of them, plus twenty-one (21) years. Except as is otherwise provided in paragraph 15.2, and except upon a transfer of title to a Public Trustee or to a mortgagee, each and every conveyance by a grantor(s) of a condominium unit shall be, for all purposes, deemed to include and incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

15.2 Exemption from Right of First Refusal-First Mortgagees; In the event of any default on the part of any owner under any first mortgage which entitles the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed of the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of paragraph 15.1, and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium unit shall be thereupon and thereafter subject to the provisions of this Declaration and the By-Laws of the Association. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the condominium unit free and clear of the provisions of paragraph 15.1, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

15.3 Exemption from Right of First Refusal - Other: The following transfers are also exempt from the provisions of paragraph 15.1:

(a) The transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s);

(b) The transfer of a deceased's interest to a devisee by Will or his heirs at law under intestacy laws;

(c) The transfer of all or part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or to a person or persons becoming partners. A transfer of all or part of a partner or partner's interests between one or more partners and/or to persons becoming partners;

(d) The transfer by gift;

(e) The transfer of an owner's interest to a trustee.

Such persons, owners, grantees or donees acquiring an interest shall be subject to all of the provisions of paragraph 15.1 except as provided herein.

15.4 Certificate of Compliance - Right of First Refusal: Upon written request of any prospective transferor, purchaser, tenant or a prospective mortgagee of a condominium unit, the Managing Agent or the Association by its Secretary shall issue a written and acknowledged certificate in recordable form evidencing that:

(a) With respect to a proposed lease or sale under paragraph 15.1, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, a deed from such mortgagee or its nominee, pursuant to paragraph 15.1, that the deeds were in fact given in lieu of foreclosure and were subject to the provisions of paragraph 15.1;

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer will not be subject to the provisions of paragraph 15.1;

and such a certificate shall be conclusive evidence of the facts

contained therein. The provisions set forth in this paragraph shall not apply to the initial sales and conveyances of condominium units made by Declarants.

## XVI. MISCELLANEOUS

16.1 Amendment or Revocation: This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of eighty-five percent (85%) or more of the condominium units, as reflected on the real estate records of Summit County, Colorado, and all of the holders of any mortgage appearing in such records and covering or affecting any or all of the condominium units consent and agrees to such revocation or amendment by instruments duly recorded.

16.2 Duration: The condominium ownership created by this Declaration and the condominium map shall continue until this Declaration is revoked or terminated in the manner provided in paragraphs herein dealing with obsolescence, condemnation or revocation.

16.3 Mortgaging a Condominium Unit - Priority: An owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create junior mortgage, liens or encumbrances on the following conditions: (1) that any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other obligations created by this declaration, the Certificate of Incorporation and the By-Laws of the Association; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of one or more of the members of the Board of Managers of the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

16.4 Compliance with Provisions of Declaration, By-Laws of the Association: Each owner shall comply strictly with the provisions of this Declaration, the Certificate of Incorporation and By-Laws 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, for damages or injunctive relief or both, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Managing Agent or Board of Managers in the name of the Association on behalf of the owners or, in the proper case, by an aggrieved owner.

16.5 Registration of Mailing Address: Each owner shall register his mailing address with the Association and all notices or demand intended to be served upon any owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices or demand 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 By-Laws of the Association. All notices or demands to be served on mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the mortgagee at such address as the mortgagee may have furnished to the Association in writing. Unless the mortgagee furnishes the Association such address, the mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this paragraph shall be deemed given when deposited in the United States mail in the form provided for in this paragraph.

16.6 Transfer of Declarant's Rights: Any right or any interest reserved hereby to the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interest, to any person or entity.

16.7 Owner's Obligations Continue: All obligations of the owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented such interest as provided herein, but the owner of a condominium unit shall have no obligation for expenses or other obligations accruing after he conveys such condominium unit.

16.8 General Declaration for Four Seasons of Breckenridge Village: The project is subject to the General Declaration for Four Seasons of Breckenridge Village, recorded in Book 202 at Page 326 of the records in the office of the County Clerk and Recorder of Summit County, Colorado. Said Declaration sets forth restrictions, easements, rules and regulations and provides for the management of certain facilities and the undertaking of certain functions within the areas subject thereto by The Breckenridge Company. Each owner, as defined herein, by the acceptance of a conveyance of a Condominium Unit, shall be entitled to the benefits, and subject to the obligations, including

