



- (4) The installations consisting of the equipment and materials making up the central services such as power, light, gas, hot and cold water.
- (5) The tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use.
- (6) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- (e) "limited common elements" means those parts of the general common elements reserved for the exclusive use of the owner of a condominium unit.
- (f) "Entire premises" or "property" means and includes the land, the building, all improvements and structures thereon, all owned in fee simple absolute, and all rights, easements and appurtenances belonging thereto.
- (g) "Common expenses" means and includes:
  - (1) All sums lawfully assessed against the general common elements;
  - (2) Expenses of administration, maintenance, repair or replacement of the general common elements;
  - (3) Expenses agreed upon as common expense by the unit owners; and
  - (4) Expenses declared common expenses by the provisions of this Declaration and the By-Laws.
- (h) "Association of Unit Owners" or "Association" means a Colorado non-profit corporation, the By-Laws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.
- (i) "Building" means the one building improvement comprising a part of the property.
- (j) "Map" or "plans" means and includes the engineering survey of the land locating thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements.

2. The map shall be filed of record and shall consist of and set forth (1) the legal description of the surface of the land; (2) the linear measurements and locative, with reference to the exterior boundaries of the land, of the building and all other improvements built or to be built on said land and by Declarant; (3) the floor plans, the designations and the linear dimensions of each apartment unit; (4) the elevation plans of the building; (5) the elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane, and the linear measurements showing the thickness of the perimeter walls of the building.

There shall be filed for record as a part of the map, a certificate of a registered architect or licensed professional engineer certifying that the improvements as constructed conform substantially to the map and that the map fully and accurately depicts the layout, measurements and location of all of the improvements on the land; the apartment unit designations, the dimensions of such units and the elevations of the unfinished floors and ceiling.

3. The property is hereby divided into the following fee simple estates:  
(a) twelve (12) fee simple estates, consisting of twelve (12) separately designated apartment units, each unit identified by number and letter on the map.

(b) The remaining portion of the entire premises referred to as the general common elements which shall be held in common by the owners, each such undivided interest being a percent of the general common elements and each such undivided interest being appurtenant to one of the twelve apartment units; the percentage being described as follows:

<u>Apartment Number</u>	<u>Percentage of Undivided Interest</u>
1A	1/5, 7143%
2A	1/5, 7143%
3A	1/5, 7143%
4A	1/5, 7143%
5 & 6A	1/8, 57145%
1 & 2B	1/11, 4286%
3 & 4B	1/11, 4286%
5B	1/5, 7143%
6B	1/5, 7143%
1 & 2C	1/11, 4286%
3 & 4C	1/11, 4286%
5 & 6C	1/11, 4286%
<b>TOTAL %</b>	<b>70,00025%</b>

4. Limited common elements can be reserved for a particular apartment unit.  
5. Each apartment and the undivided interest in the general common elements and the limited common elements, if any, appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit.

6. Every deed, lease, mortgage, deed of trust or other instrument may legally describe a condominium unit by its identifying apartment unit number, followed by the words, "Bldg. 1A, TYROLISAN TERRACE APARTMENTS" with further reference to the map filed for record and the recorded Declaration. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect the general common elements and the limited common elements, if any, appurtenant thereto, and each description shall be construed to include a non-exclusive easement for ingress and egress and for use of the general common elements together with the right to use of the limited common elements, if any.

7. Declarant shall give written notice to the assessor of Summit County, Colorado, of the creation of condominium ownership of this property, as is provided by law, so that each unit and its percentage of undivided interest in the general common elements shall be deemed a parcel and subject to separate assessment and taxation.

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

9. The general common elements shall be owned in common by all of the owners of the apartment units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

10. Each owner shall be entitled to exclusive ownership and possession of his apartment. Each owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

11. Each apartment shall be used and occupied solely for the purpose of lodging or as a dwelling by the owner or by the owner's family, guests, agents, employees, invitees, licensees or tenants.

12. If any portion of the general common elements encroaches upon an apartment 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 an apartment unit encroaches upon the general common elements, or upon an adjoining apartment 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 the apartment units.

13. Subsequent to the completion of the improvements described on any map, no labor performed or materials furnished and incorporated in an apartment unit with the consent or at the request of the unit owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the apartment unit of any other unit owner not expressly consenting to or requesting the same, or against the general common elements. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the apartment unit or any other owner or against the general common elements for construction performed or for materials, services or other products incorporated in the owner's apartment unit at such owner's request.

14. The administration of this condominium property shall be governed by the By-Laws of the Tyrollean Terrace Association, a Colorado non-profit corporation, hereinafter referred to as the "Association". An owner of a condominium unit, upon becoming such an owner, shall be a member of the Association and shall remain a member for the period of his ownership.

15. The owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers of the Association, to have access to each apartment 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 repair therein necessary to prevent damage to the general common elements or to another apartment unit or units.

Damage to the interior or any part of an apartment unit or units 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 apartment 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 negligence of an apartment unit owner, then such unit owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage.

16. An owner shall maintain and keep in repair the interior of his own apartment including the fixtures thereof. All fixtures and equipment installed within the apartment unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which are briefly hereinafter referred to as "utilities") enter the apartment unit shall be maintained and kept in repair by the owner thereof.

17. 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.

18. An owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective apartment unit, nor shall owner be deemed to own the utilities running through his apartment unit which are utilized for, or serve more than one apartment unit, except as a tenant in common with the

other owners. An owner, however, shall be deemed to own and shall maintain the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings; doors and windows and other elements consisting of paint, wallpaper and other finishing materials and the interior non-supporting walls contained within the apartment unit.

19. Each owner shall comply strictly with the provisions of this Declaration, the By-Laws 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, maintainable by the Manager or Board of Managers on behalf of the owners or, in a proper case, by an aggrieved owner.

20. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of sixty-five per cent, or more, of the general common elements, and all of the holders of any recorded mortgage or deed or lease covering or affecting any or all condominium units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded; provided however, that the percentage of the undivided interest, in the general common elements appurtenant to each apartment unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded.

21. All owners shall be obligated to pay the estimated assessments imposed by the Board of Managers or Managing Agent of the Association to meet the common expenses. Except for insurance premiums, the assessments shall be made pro rata according to each owner's percentage interest in and to the general common elements. Assessments for insurance premiums shall be based upon that proportion of the total premium(s) that the insurance carried on a condominium unit bears to total coverage. 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. Assessments for the estimated common expenses, including insurance, shall be due monthly in advance on the first day of each month. The Managing Agent or Board of Managers shall prepare and deliver or mail to each owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments are made, however the Declarant need not pay any maintenance and future repairs excoriated fees. Contribution for monthly assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of a month.

22. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent or Board of Managers of the Association shall from time to time determine is to be paid by all of the owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things, expenses of management; taxes and special assessments until separately assessed; fire with extended coverage and vandalism and malicious mischief with endorsements attached issued in the amount of the maximum replacement value of a. of the condominium units (and also all fixtures; interior walls and partitions; decorated and finished surfaces of perimeter walls, floors and ceiling; doors; windows and other elements or materials comprising a part of the apartment units); casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting; repairs and renovations; heating; trash and garbage collection; wages; water charges; legal and accounting fees; expenses and liabilities incurred by the Managing Agent or Board of Managers under or by reason of the Declaration; the payment of any debt or liability remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the general common elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the owners from their obligation to pay.

The Managing Agent or Board of Managers shall obtain and maintain at all times insurance of the type and kind provided hereinafter, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other apartment or condominium buildings, fixtures, equipment and personal property, similar in construction to the Association the insured. The insurance shall be carried by companies authorized to business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Association the insured, which policy or policies shall identify the interests of each condominium unit owner and which shall provide for a standard, non-contributory mortgage clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice to each owner and each first mortgagee. Said Managing Agent or Board of Managers shall, upon request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or noncompliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Determination of maximum replacement value of all condominium units (for insurance purposes) shall be made annually by one or more written appraisals, copies of which shall be furnished forthwith to each mortgagee of a condominium unit. In addition, each owner shall be notified of such appraisal(s).

23. 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 apartment.

24. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit shall constitute a lien on such unit superior (prior) to all other liens and encumbrances, except only for:

- (a) Tax and special assessment liens on the unit in favor of any assessing unit, and
- (b) 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 Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, 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 the Managing Agent and may be recorded in the office of the Clerk and Recorder of Summit County, Colorado. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by 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 of claim thereof. In any such foreclosure the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice of claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure, and the Association shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same. An assignment of rents is also given to the Association and the Board of Managers or Managing Agent may rent such unit during the foreclosure period and set aside the rent so collected against the amount due.

The amount of the common expenses assessed against each condominium unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a condominium unit may pay any unpaid common expense 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.

25. Upon payment of a reasonable fee not to exceed Ten Dollars and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium unit, the Association, by its Managing Agent or Board of Managers, shall issue a written statement setting forth the amount of the unpaid common expenses. If any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which 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 complied with within ten days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses 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 Ten Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Managers, setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the subject unit.

26. Any 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 or encumbrance shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create junior mortgages 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 and by the By-Laws; (2) That the mortgages 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 which insurance policies were effected 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.

27. In the event any owner of a condominium unit other than the Declarant shall wish to sell or lease the same, and shall have received a bona fide offer therefore from a prospective purchaser or tenant, the remaining unit owners shall be given immediate written notice thereof together with an executed copy of such offer and the terms thereof. The right of first refusal herein provided shall not apply to leases or sub-leases having a term of less than sixty-one days. Such notice and copy shall be given to the Board of Managers for all of the owners. The remaining unit owners through the Board of Managers, or a person named by them, shall have the right to purchase or lease the subject apartment upon the same terms and conditions as set forth in the offer therefore, provided written

notice of such election to purchase or lease is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the twenty-day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event the owner shall attempt to sell or lease his condominium unit without affording to the other unit owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the condominium unit owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his interest in the project parcel to a trust deed, mortgage or other security instrument.

The failure of or refusal by the Board of Managers to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

~~The right of first refusal~~ The right of first refusal, as provided herein, shall extend and run for the period ~~of ten (10) years~~ of the life of Thomas C. Miller Jr., plus 31 years.

Except as is otherwise provided in paragraph 28, and except upon a transfer of title to a Public Trustee or to a mortgagee, each grantor of a condominium unit, upon transferring or conveying his interest, shall 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.

28. 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 to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of paragraph 27, 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. 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 27, but his grantee shall thereupon and thereafter be subject to all of the provisions hereof.

The following transfers are also exempt from the provisions of paragraph 27:

- (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 any 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's or partners' interests between one or more partners and/or to persons becoming partners.
- (d) Sale or lease by the Declarant, its successors or assigns.



- (c) The transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution. A transfer to the resulting entity following a corporate merger or consolidation; provided however, that fifty per cent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the condominium unit.

Such persons, owners or grantees acquiring an interest shall be subject to all of the provisions of paragraph 27 except as is provided herein.

If an owner of a condominium unit can establish to the satisfaction of the Managing Agent or Board of Managers that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of paragraph 27.

29. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium unit, the Managing Agent or Board of Managers of the Association shall forthwith, or where time is specified, at the end of time, issue a written and acknowledged certificate in recordable form, evidencing that:

- (a) With respect to a proposed lease or sale under paragraph 27, 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 first mortgagee or its nominee, pursuant to paragraph 28, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 27;
- (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 27;

Such a certificate shall be conclusive evidence of the facts contained therein.

30. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction 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 from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Tyrolean Terrace Association, a Colorado corporation, not for profit, 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. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which are necessary and appropriate to exercise the powers granted by this paragraph 30. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless all 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.

- (b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than fifty per cent of all of the general common elements, 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 days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 24. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in following order:
- (1) For payment of the balance of the lien of any first mortgage;
  - (2) For payment of taxes and special assessments liens in favor of any assessing entity;
  - (3) For payment of unpaid common expenses;
  - (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 more than fifty per cent of all of the general common elements, not including land, are destroyed or damaged, and if the owners representing an aggregate ownership interest of seventy per cent, or more, of the general common elements, do not voluntarily, within one hundred 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, the entire remaining 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 insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into nine 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 number of the apartment unit 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, toward the partial or full payment of the lien of any first mortgage against the condominium unit represented by such separate account. There shall be added to each such account the

apportioned amount of the proceeds derived 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 sub-paragraph (b) (1) through (5) of this paragraph.

If the owners representing an aggregate ownership interest of sixty-five per cent, or more, of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgages, 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 days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 24. 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 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 proceeds derived from 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 sub-paragraph (b) (1) through (5) of this paragraph.

- (d) The owners representing an aggregate ownership interest of eighty-five per cent, or more, of the general common elements may agree that the general common elements of the property are obsolete and that the same should be renewed or reconstructed. If such instance, then the expense thereof shall be payable by all of the owners as common expenses; provided however, that any owner not agreeing to such renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty 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 "commencing date" from which all periods of time mentioned herein shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party), an appraiser who shall be a member of the Denver Board of Realtors. If either party fails to make such a nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another appraiser (to be selected from the Denver Board of Realtors). If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser (to be selected from the Denver Board of Realtors) to be an umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two persons (each of whom shall be a member of the Denver Board of Realtors), and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the

umpire is to be drawn by lot shall be submitted within ten days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, the such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owner. The sale shall be consummated within fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in sub-paragraph (b) (1) through (5) of this paragraph.

(e) The owners representing an aggregate ownership interest of eighty per cent. or more, of the general common elements may agree that the general common elements of the property are obsolete and that the same should be sold. Such agreement of 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, 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 B/L-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 in nine 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 number of the apartment 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 sub-paragraph (b) (1) through (5) of this paragraph.

31. Each owner shall, register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an 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, demands or other notices intended to be served upon the Board of Managers of the Association or the Association shall be sent by certified mail, postage prepaid, 2741 So. Colorado Blvd., Denver, Colorado until such address is changed by a notice of address change duly recorded.

32. 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 circumstances shall not be affected thereby.


33. 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.

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

35. Parking shall be on a non exclusive use basis.

36. The Association can own or lease, sell or rent any type of personal property which it deems necessary.

IN WITNESS WHEREOF, Declarant, by its corporate officers, a duly executed this Declaration this 15<sup>th</sup> day of August, 1967.

 the  
**Miller Development**  
corp.  
2721 SOUTH COLORADO BLVD. DENVER 22, COLORADO

By *[Signature]*  
President



*[Signature]*  
Secretary

STATE OF COLORADO )  
                                  ) SS.  
City & County of Denver )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 1967, by Thomas G Miller Jr, President and Blair T. Leitch, Secretary of The Miller Development Corporation.

Witness my hand and official seal.

10-9-67

*[Signature]*  
Notary Public

