

**CONDOMINIUM DECLARATION**  
**FOR**  
**WESTHAVEN CONDOMINIUMS**

This Condominium Declaration is executed this 28<sup>th</sup> day of July, 1993, at Gunnison County, Colorado by Lawrence L. Blatt and Thomas Swineford.

1. STATEMENT OF INTENT AND PURPOSE:

1.1 Authority - This Condominium Declaration is executed to submit the Real Property to condominium ownership pursuant to the "Colorado Common Interest Ownership Act".

1.2 Intention - Declarant is the owner of the Real Property and intends to provide for condominium ownership of the Real Property.

1.3 Purpose - To accomplish this purpose, Declarant executes this Condominium Declaration for WestHaven Condominiums, to define the character, duration, rights, duties, obligations and limitations of condominium ownership in the Project.

1.4 Declaration - Declarant hereby declares that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the Project and shall be binding upon and accrue to the Declarant, its successors and assigns and any person acquiring and holding an interest in the Project, its grantees, successors, heirs, personal representatives, or assigns.

2. DEFINITIONS: The following definitions shall apply in this Condominium Declaration and the exhibits attached hereto unless the context shall expressly provide otherwise:

2.1 Association - means WestHaven Condominiums Association, a Colorado nonprofit corporation which shall govern the administration of the Project.

2.2 Building - means the buildings constructed on the Real Property.

2.3 Common Elements - means all of the Project except the Units.

2.4 Common Expenses - means and includes:

2.4.1 Expenses declared common expenses by provisions of this Condominium Declaration.

2.4.2 Expenses of administration, operation and management, maintenance, repair or replacement of the common Elements.

2.4.3 All sums lawfully assessed against the Common Elements.

2.4.4 Expenses agreed upon as common expenses by the Unit Owners.

2.5 Condominium Map - means the map for WestHaven Condominiums filed July 28, 1993, and bearing Reception No. 444146 of the records of Gunnison County, Colorado.

2.6 Declarant - means Lawrence L. Blatt and Thomas Swineford.

2.7 Declaration or Condominium Declaration - means this Condominium Declaration, and any and all duly executed amendments, supplements or additions to this Condominium Declaration.

2.8 General Common Elements - means and includes all of the common elements as defined by statute, except those portions of the Project which constitute "Units" or "Limited Common Elements."

2.9 Limited Common Elements - means any Common Element designated and reserved for the exclusive use of one or more Units but fewer than all of the Units.

2.10 Mortgage - means any real estate mortgage, deed of trust, or security instrument by which a Unit is encumbered.

2.11 Owner - means a person, firm, corporation, partnership, or other entity, or any number of combinations thereof, owning a Unit.

2.12 Project - means the Real Property and the buildings and all improvements and structures thereon, together with all rights, easements and appurtenances belonging thereto, submitted to condominium ownership by this Declaration and which may be subsequently submitted to condominium ownership under the terms of this Declaration or any supplemental Declaration as is hereinafter provided.

2.13 Real Property - means the real property described in attached Exhibit A and incorporated herein by reference.

2.14 Unit - means an individual air space unit, contained within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of an air space unit as reflected on and described in the Condominium Map, together with all fixtures and improvements therein contained except for common utility facilities, the interior decorated or finished surfaces of such Unit's interior walls, floors, ceilings, windows and doors, and the interior non-supporting or non-load bearing walls 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. Ownership of a Unit includes ownership of the undivided interest in the General Common Elements appurtenant thereto and any Limited Common Elements designated for the exclusive use of such Unit.

3. ESTABLISHMENT OF CONDOMINIUM OWNERSHIP: The Project is hereby divided into four (4) Units as follows:

3.1 Fee Simple Estates. Four (4) fee simple estates, each consisting of a separately designated Unit, together with an undivided interest in the General Common Elements appurtenant to such Unit and any Limited Common Elements designated for the exclusive use of such Unit, as set forth on attached Exhibit B and incorporated herein by reference.

3.2 Use and Enjoyment - Subject to the limitations herein contained, any Owner shall have the nonexclusive right to use and enjoy the General Common Elements and shall have the exclusive right to use and enjoy any Limited Common Elements which may be designated on the Condominium Map for that Owner's Unit.

3.3 Enlarge and Supplement - The number of Units and the undivided interest in the Common Elements of each Unit is subject to the right of the Declarant to enlarge and supplement the Project as provided in paragraph 39.

4. INSEPARABILITY OF A UNIT: Each Unit and the undivided interest in the Common Elements, the easements appurtenant thereto and the exclusive use of the Limited Common Elements designated for such Unit shall together comprise one Unit which shall be inseparable and may be conveyed, leased, devised or encumbered only as a Unit.

5. CONDOMINIUM MAP:

5.1 Condominium Map - A Condominium Map shall be filed for record prior to the first conveyance of a Unit shown thereon. Such map shall consist of and set forth the following:

5.1.1 The legal description of the Real Property and a survey thereof.

5.1.2 The linear measurements and locations, with reference to the exterior boundaries of the Real Property, of the Buildings and all other improvements built on the Real Property.

5.1.3 The floor and elevation plans of the Buildings.

5.1.4 The appropriate designation and identification of all Units, General Common Elements and Limited Common Elements.

5.2 Supplemental Condominium Maps. A supplemental Condominium Map shall be filed prior to the conveyance of any Units shown thereon, and each supplemental Condominium Map shall contain the same requirements as set forth for the original Condominium Map.

5.3 Amendments - Declarant reserves the right to amend any Condominium Map from time to time, to conform the same according to the actual location of any of the improvements and to establish, relocate and vacate easements, access roads and parking areas. Declarant's right under this paragraph shall terminate upon the conveyance of all of the Units set forth on the Condominium Map to which reference is made, or within one year of the date of filing the Condominium Map, whichever event shall first occur.

5.4 Certificate of Surveyor - As a part of any Condominium Map, there shall be filed for record a certificate of a registered land surveyor of the State of Colorado, 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 Real Property; the Unit designations, the dimensions of such Units and the elevations of the unfinished floors and ceilings.

5.5 Interpretation - In interpreting the Condominium Map or any part thereof, the existing physical boundaries of the Units shall be conclusively presumed to be its boundaries.

6. DESCRIPTION OF UNIT:

6.1 Legal Description - Every instrument affecting the title to a Unit may describe that Unit as follows:

Unit \_\_\_\_\_, WestHaven Condominiums, according to the Condominium Map bearing Reception No. 444146 and the Condominium Declaration pertaining thereto in Book 727 at page 827 of the records of Gunnison County, Colorado,

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City of Gunnison,  
County of Gunnison,  
State of Colorado.

6.2 Sufficiency - Such method of description shall be sufficient for all purposes to sell, convey, transfer, and encumber or otherwise affect the Unit and the undivided interest in the Common Elements appurtenant to the Unit and all other appurtenant properties and property rights and incorporates all of the rights, duties, limitations and burdens incident to ownership of a Unit as described in this Declaration.

6.3 Amendments - The reference to the Condominium Map and the Condominium Declaration in any instrument shall be deemed to include any supplements or amendments to the Condominium Map or the Condominium Declaration, whether or not specific reference is made thereto.

7. TITLE: A Unit may be held and owned by more than one Owner as joint tenants or as tenants in common, or in any real property tenancy or estate recognized under the laws of the State of Colorado.

8. TERM OF OWNERSHIP: The separate estate of an Owner of a Unit created by this Declaration shall continue until revoked in the manner contained in this Declaration or by operation of law.

9. NONPARTITIONABILITY AND TRANSFER OF COMMON ELEMENTS: The Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Owner specifically agrees not to institute any action

therefor. Furthermore, each Owner agrees that this paragraph 9 may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the complying Owner to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the complying Owner incurs in connection therewith. Further, all Owners covenant that, except as provided in paragraph 30, they shall neither by act nor omission, seek to abandon, subdivide, encumber, sell or transfer the Common Elements without first obtaining the written consent of at least fifty-one percent (51 %) of the first mortgagees of record of the Units. Each such mortgagee shall have one vote for each mortgage owned by it. Any such action without the written consent of said mortgagees shall be null and void.

10. USE OF GENERAL COMMON ELEMENTS AND LIMITED COMMON ELEMENTS: Each Owner shall be entitled to exclusive ownership of his Unit. Each Owner may use the General and Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

11. RESIDENTIAL USE AND OCCUPANCY: The Units in the Project shall be used and occupied solely for single family residential purposes. Such use and occupancy shall be subject to the provisions contained in this Declaration and the rules and regulations enacted by the Association. This restriction as to residential use only shall not apply to Declarant, its agents, employees, invitees and assigns during the period of construction and sale of the Units.

12. EASEMENTS FOR ENCROACHMENTS: In the event that any portion of the Common Elements encroaches upon any Unit or Units, or in the event that any portion of a Unit encroaches upon any other Unit or Units or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (1) settling of a building; or (2) alteration or repair to the Common Elements; or (3) repair or restoration of a building(s) and/or a Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings; a valid easement shall exist for the encroachment and for the maintenance of the same so long as the building(s) stands or encroachment exists. In the event that any one or more of the Units or buildings or other improvements comprising part of the Common Elements are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds to and/or mortgages relating to Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such Unit indicated on the Condominium Map.

13. RESERVATION FOR ACCESS-MAINTENANCE, REPAIR AND EMERGENCIES:

13.1 Right of Access -The Association shall have the irrevocable right to have access to each Unit and all Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or to another Unit.

13.2 Damages - Damage to the interior or any part of a Unit, except for Owner installed or constructed improvements, resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit shall be a common expense of all of the Owners; provided, however, that if such damage is caused by the negligence of the Owner of the Unit, his agents, employees, invitees or tenants then such Owner shall be responsible and liable for all of such damage and the cost thereof shall be the Owner's obligation and shall be immediately paid upon demand therefor.

13.3 Restoration - All damaged improvements shall be restored substantially, to the extent reasonably practical, to the same condition in which they existed prior to such damage.

13.4 Common Expense - All maintenance, repairs and replacement of the Common Elements, whether located inside or outside of any Unit (unless caused by the negligence, misuse or deliberate act of an Owner, in which case such expense shall be charged to such Owner), shall be the Common Expense of all of the Owners.

14. SEPARATE ASSESSMENTS AND TAXATION - NOTICE TO ASSESSOR: The Declarant shall give written notice to the County Assessor of Gunnison County, Colorado, of the creation of condominium ownership of this Project, so that each Unit, together with its undivided interest in the Common Elements and Limited Common Elements appurtenant thereto, shall be deemed a separate parcel and subject to separate assessment and taxation.

15. ASSESSMENTS AND TAXATION: Each Unit shall be separately assessed for all taxes and assessments of the City of Gunnison, the County of Gunnison, the State of Colorado, and any other political subdivision or district having authority to tax. For the purpose of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in the Common Elements appurtenant to such Units.

16. ASSOCIATION AS ATTORNEY-IN-FACT: This Declaration does hereby make mandatory and does constitute the irrevocable appointment of the Association as attorney- in-fact for the Owner of every Unit for all purposes with respect to the Project upon its damage, destruction, obsolescence or condemnation.

17. AUTHORITY OF ASSOCIATION:

17.1 Association as Attorney-in-Fact - The title to any Unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or any prior Owner shall constitute the

appointment of the Association as the Owner's attorney- in-fact for the purposes expressly set forth in this Declaration.

17.2 Power of Association -The Association, as attorney-in-fact, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other document with respect to the interest of the Owner of a Unit for the purposes expressly set forth in this Declaration.

17.3 Owner's Compliance - Each Owner shall comply strictly with the provisions of this Declaration, any supplement or amendment hereto, and all decisions, resolutions, rules and regulations of the Association adopted in accordance with this Declaration. Failure to comply with any of the same shall be grounds for an action to recover any amounts due, for damages or injunctive relief or both, together with reasonable attorneys' fees and costs, incurred in connection therewith, brought by the Association on behalf of the Owners, or, in a proper case, by any aggrieved Owner.

17.4 Duty of Association - The Association shall have the duty of maintaining and repairing all of the Common Elements within the Project. The cost of all such maintenance shall be a common expense of all of the Owners. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

17.5 Specific Powers and Duties of Association - In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and its Articles of Incorporation and amendments or by law, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as a part of the common expense assessments:

17.5.1 Maintenance, repair and restoration of the Common Elements, except only as otherwise provided.

17.5.2 Administration and management of the Project.

17.5.3 The heating, lighting and other utility services for all common areas.

17.5.4 The obtaining and maintaining of all required insurance as hereafter provided.

17.5.5 The enforcement of all of the provisions of this Declaration and the Association's rules and regulations and the collection of all obligations and assessments owed to the Association by the Owners.

17.5.6 To act as attorney-in-fact for the Owners in accordance with this Declaration.

17.5.7 To perform all other acts required by this Declaration, or the Articles of Incorporation and Bylaws of the Association, or any amendments thereto.

17.5.8 In addition to the foregoing, the Association shall have the right to hire one or more persons including a managing agent to perform such services. No contract or agreement for the employment of a managing agent or professional manager for the Project shall be for a term in excess of three years and any such agreement shall provide that the same may be terminated with or without cause and without payment of any termination fee on 90 days' written notice.

17.5.9 To adopt and enforce reasonable rules and regulations for the governance of the Project and which rules and regulations may specifically govern, architectural control including architectural standards and the procedure to grant any variance, use restrictions as to parking, trash and trash collection, noise, pets, and exterior communication antennas for radio, television, etc.

17.5.10 To grant easements, leases, licenses, and concessions on, through or over the Common Elements.

## 18. ADMINISTRATION AND MANAGEMENT BY THE ASSOCIATION:

18.1 Administration and Management - The administration and management of the Project shall be governed by this Declaration and the Articles of Incorporation and the Bylaws of the Association. In the event of any conflict between or among the provisions of the Declaration (including all supplements thereto), the Articles of Incorporation or Bylaws of the Association, the following priorities shall govern such conflict:

18.1.1 The Declaration shall control over the Articles of Incorporation and Bylaws, and

18.1.2 The Articles of Incorporation shall control over the Bylaws.

18.2 Membership - The Owner of a Unit, upon becoming such Owner, shall be entitled and required to be a member of the Association and shall remain a member for the period of his ownership.

18.3 Appurtenant to Unit - There shall be one membership in the Association for each Unit. Such membership shall be appurtenant to the Unit and shall be transferred automatically by a conveyance of the Unit to the new Owner.

18.4 Voting - Each membership in the Association shall be entitled to cast a vote in accordance with the ownership interest of the Common Elements appurtenant to that Unit as is provided in Paragraph 3.1 of this Condominium Declaration.

18.5 Limitation on Membership - No person other than an Owner may be a member of the Association and a membership may not be transferred except in connection with the conveyance or transfer of the Unit; provided however, that such membership may be assigned to the holder of a mortgage as further security for the loan secured by the lien of the mortgage holder upon the Unit.

18.6 Certifications - The Association shall have the full power and authority to make all certifications required by the Federal Home Loan Mortgage Corporation

regarding the extent of, and limitation upon, the rights, powers, and privileges of the Association hereunder.

18.7 Rights of Declarant. Notwithstanding any other provision of this Declaration or the Articles of Incorporation of the Association, Declarant, their successors and assigns, shall have the right to appoint the members of the Board of Directors (who need not be members of the Association or Owners of Units) during the period of Declarant control, which is 10 years after the date of filing of this Declaration. The period of Declarant control shall terminate no later than the earlier of (1) 60 days after the conveyance of 75% of the Units that may be created within WestHaven Condominiums to Owners other than Declarant, (2) two years after the last conveyance of a Unit in WestHaven Condominiums by Declarant in the ordinary course of business, or (3) two years after any right to add new Units in WestHaven Condominiums was last exercised. Further, not later than 60 days after the conveyance of 25% of the Units that may be created in WestHaven Condominiums to Owners other than Declarant, at least one member and not less than 25% of the members of the Board of Directors shall be elected by the Owners other than Declarant, and not later than 60 days after the conveyance of 50% of the Units that may be created in WestHaven Condominiums to Owners other than Declarant, not less than 1/3 of the members of the Board of Directors must be elected by Owners other than Declarant.

#### 19. OWNER'S MAINTENANCE RESPONSIBILITY OF UNIT:

19.1 Responsibility of Owner - The Owner of a Unit shall keep and maintain the interior of his Unit, including, but without limitation, the interior walls, ceilings, floors, windows, glass and all permanent fixtures and appurtenances thereto in a good and proper state of repair and in a clean and attractive condition.

19.2 Utilities - The Owner shall not be deemed to own any utilities running through his Unit which serve one or more other Units except as tenants in common with the other Owners. No utilities shall be altered, changed, relocated or disturbed without the prior written consent of the Association.

19.3 Obligations of Repair- Such right to repair, alter and remodel shall carry the obligation to replace any finished materials of equal or greater value removed with similar or other types or kinds of finishing materials.

19.4 Repair of Utilities - All fixtures and equipment installed within the Unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are referred to as "utilities") enter the Unit shall be maintained and kept in repair by the Owner thereof.

19.5 Structural Soundness - An Owner shall neither perform nor permit any act or work that will impair the structural soundness or integrity of the building or impair any easement or utility.

19.6 Exterior of Unit. An Owner shall not change, modify, paint, decorate, alter or in any way make any change to any exterior wall, surface, roof, deck, patio,

entry, landscaping, paving, trees, shrubbery or other improvements without the prior written approval by the Association.

## 20. REVOCATION OR AMENDMENT OF DECLARATION:

20.1 Revocation - This Declaration shall not be revoked unless all of the Owners and at least fifty-one percent (51 %) of the holders of any recorded first mortgage covering or affecting any or all of the Units consent to such revocation by an instrument(s) duly recorded in the records of Gunnison County, Colorado; except only as otherwise provided in Paragraph 16 pertaining to the appointment of the Association as attorney-in-fact in the event of damage, destruction, obsolescence or condemnation of the Project.

20.2 Amendment - This Declaration shall not be amended unless the Owners representing an aggregate ownership interest of sixty-seven percent (67%) or more of the Common Elements, and the holders of any recorded first mortgages representing an aggregate of fifty-one percent (51 %) of such first mortgages covering or affecting any or all Units affirmatively vote and consent to such amendment.

20.3 Junior Mortgage Holders - The consent of any junior mortgage holders shall not be required under the provisions of this paragraph.

20.4 Percentages - In determining the appropriate percentage approval of the holders of first mortgages, whenever such approval may be required for any action taken by the Owners pursuant to this Declaration, each first mortgage shall have one vote for each Unit mortgaged by it.

20.5 Certificate of Amendment. The adoption of an amendment pursuant to this paragraph 20 shall be evidenced by a certificate of the secretary of the Association stating that such amendment was approved by the affirmative vote of Owners representing at least sixty-seven percent (67%) of the Common Elements and by the consent of fifty-one percent (51 %) of the holders of recorded first mortgages.

20.6 Reservation by Declarant - Notwithstanding any other provision of this Declaration, Declarant hereby reserves and is hereby granted the right and power until such time as all of the Units within the Project have been conveyed to third person purchasers, to modify and amend this Declaration for the following purposes:

20.6.1 To correct technical errors or clarify existing provisions.

20.6.2 To comply with applicable laws, ordinances or regulations of any governmental entities having jurisdiction over the Project.

20.6.3 To comply with the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other lenders or insurers in the secondary mortgage market, or to include or change any provision so as to cause any such agency or entity to make, purchase, sell, insure or guarantee first mortgages on a Unit.

20.6.4 The adoption of an amendment by Declarant pursuant to this paragraph shall be evidenced by a certificate of Declarant stating that such amendment was adopted by the unilateral action of the Declarant pursuant to this paragraph.

## 21. ASSESSMENT FOR COMMON EXPENSES BY THE ASSOCIATION:

21.1 Payment of Assessments - Declarant, for each Unit owned by it, and each Owner of a Unit by the acceptance of a deed therefor shall be deemed to covenant and agree and shall be obligated to pay to the Association all assessments made by the Association for the purposes provided in this Declaration.

21.2 Apportionment - The assessments and expenses pertaining to the Common Elements and to the Project as a whole shall be apportioned among all of the Owners of Units, in accordance with their undivided interest in the Common Elements as set forth herein. The Limited Common Elements shall be maintained as General Common Elements and the Owners having use thereof shall not be subject to any separate charge or assessment therefor.

## 22. AMOUNT OF ASSESSMENTS FOR COMMON EXPENSES:

22.1 Determination of Assessments - The annual assessments made for Common Expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all Common Expenses growing out of or connected with the maintenance and operation of the Common Elements, which sums may include, among other things, expenses of management, taxes and special assessments until the Units are separately assessed, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, trash collection, all water and sewer charges for all individual Units, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners.

22.2 Budget - Within 30 days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

22.3 No Waiver -The omission or failure of the Association to fix such assessment for any period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

22.4 Payment of Utilities - Each Owner shall be obligated to pay all charges for any separately metered utilities servicing his Unit. In the event that any utility is master metered to the Association, then such utility service shall be a part of the common assessments as above provided.

22.5 Reserve fund - The Association shall be obligated to establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through monthly payments of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

22.6 Special Assessments - In addition to assessments for common expenses as above set forth, the Association may at any time and from time to time determine, levy and assess any special assessment for the purpose of paying, in whole or in part, the costs, fees or expenses of any construction, reconstruction, repair, replacement or maintenance of the Common Elements or the Project or any facilities located thereon, or any other lawful purpose contemplated by this Declaration, or the Articles of Incorporation or Bylaws of the Association, or permitted by law. Such special assessment shall be assessed to each Owner in accordance with his ownership interest in the Common Elements and shall be due and payable in the manner set forth in the notice of such special assessment.

### 23. TIME OF PAYMENTS OF ASSESSMENTS FOR COMMON EXPENSES:

23.1 Fiscal Year - The assessments of the Association shall be computed and determined on a fiscal year basis.

23.2 Payable Monthly - Unless the board of directors of the Association otherwise determines, assessments shall be payable monthly in advance on or before the tenth day of each month by the Owners of the Units. Delinquent assessments shall bear interest as provided in this Declaration.

23.3 Written Notice - The Association shall give written notice to the Owners of the Units of the annual assessment, and shall deliver to each Owner itemized statements.

### 24. LIEN FOR NONPAYMENT OF COMMON EXPENSES:

24.1 Lien for Nonpayment - All sums assessed to any Unit and not paid within 30 days from the date of assessment, together with interest thereon as herein provided, shall constitute a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit except only:

24.1.1 Tax and assessment liens on the Unit by any governmental authority.

24.1.2 All sums unpaid on a first Mortgage of record, including all unpaid obligatory advances made pursuant to such mortgage; provided, however, that the lien of the Association shall have priority and status over any other lien or Mortgage

to the extent and in the manner provided in the Colorado Common Interest Ownership Act or otherwise by law.

24.2 Enforcement of Lien - Such lien may be enforced by foreclosure by the Association in the same manner as a foreclosure of a mortgage. In such foreclosure, the Owner shall be required to pay the costs and expenses for such proceedings, the cost and expenses for filing the notice of claim of lien and all reasonable attorneys' fees. The Owner shall also be required to pay to the Association the monthly assessments for the 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 in the Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

24.3 Payment of Mortgage - Any mortgagee holding a lien on a Unit may pay, but shall not be required to pay, the amount secured by such lien, and upon such payment said mortgagee shall have a lien on such Unit for the amounts paid of the same rank as the lien of its mortgage.

24.4 Notice to Mortgagee - The Association shall report to any mortgagee of a Unit any unpaid assessments remaining unpaid for more than 30 days after the date of assessment, provided that such mortgagee shall have made written request therefor.

25. OWNERS' OBLIGATION FOR PAYMENT OF ASSESSMENTS: The amount of the Common Expenses assessed against each Unit shall be the personal and individual debt of the Owner or Owners thereof at the time the assessment is made. Suit to recover a money judgment for such unpaid debt shall be maintainable by the Association without foreclosing or waiving the lien securing the same. In any such event, the prevailing party may recover attorneys' fees and other costs of collection. No Owner may exempt himself from the liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or abandonment of his Unit.

## 26. STATEMENT OF ACCOUNT:

26.1 Written Statement of Account - Upon payment of a reasonable fee, and upon the written request of any Owner, prospective Owner, or holder of a mortgage of a Unit, the Association 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 assessments become due, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

26.2 Joint Liability - The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for 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. The term "grantee" as used in this paragraph shall not apply to the holder of any first mortgage upon a Unit, or to any person or entity acquiring title to a Unit by

either sheriff's or public trustee's deed through foreclosure, or who acquires title by a deed given in lieu of foreclosure of a mortgage, deed of trust, or other security instrument encumbering such Unit.

## 27. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION:

27.1 No Lien on Common Elements - Subsequent to the completion of the improvements described on the Condominium Map, no labor performed or materials furnished and incorporated into a 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 filing of a lien against the Unit of another Owner not expressly consenting to or requesting the same, or against the Common Elements, except as to the undivided interest to the Unit of the Owner for whom such labor shall have been furnished.

27.2 Rights of Association - The provisions herein contained are subject to the rights of the Association, as set forth herein.

27.3 Indemnification - 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 Unit or any part thereof, of any other Owner for labor performed, or for materials furnished in work on such Owner's Unit.

28. MORTGAGING A UNIT - PRIORITY: Any Owner shall have the right from time to time to mortgage or encumber his interest in a Unit by mortgage. A first mortgage shall be one which has first and paramount priority under applicable law and a mortgage imposed against the Unit by virtue of the first sale of such Unit by the Declarant shall be construed and presumed to be a first mortgage. The Owner of a Unit may create junior mortgages on the following conditions:

28.1 Junior Mortgage Subordinate - That any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for common expenses and other obligations created by this Declaration, the Articles of Incorporation and Bylaws of the Association.

28.2 Release by Junior Mortgagee - That the holder of any junior mortgage shall release, for the purpose of restoration of any improvements upon the Project, all of his right, title and interest in and to the proceeds under insurance policies upon said Project wherein the Association is named insured. Such release shall be furnished upon written request by the Association.

## 29. INSURANCE:

29.1 Required Insurance by Association - The Association shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates as established by the Colorado Insurance Commissioner, and written with companies licensed to do business in the State of Colorado and having an acceptable insurance rating, covering the risks set forth below. The board of directors of the Association shall not obtain any policy where: (1) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; or (2) by the terms of

carrier's charter, bylaws or policy, loss payments are contingent upon action by the company's board of directors, policyholders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds. The types of coverage to be obtained and risks to be covered are as follows, to wit:

29.1.1 Fire insurance with extended coverage and standard risk endorsements, which endorsements shall include endorsements for vandalism and malicious mischief. Said casualty insurance shall insure the entire Project and any property, the nature of which is a Common Element (including all of the Units and fixtures therein initially installed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by Owners) together with all service equipment contained therein in an amount equal to the maximum replacement value, without deduction for depreciation of such coverage if available. All policies shall contain a standard non-contributory mortgage clause in favor of each mortgagee of a Unit, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of mortgagees as their interests may appear.

29.1.2 If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the act or the aggregate of the unpaid principal balances of the mortgages on the Units comprising the Project.

29.1.3 Public liability and property damage insurance in such limits as the board of directors of the Association may from time to time determine, but not in an amount less than \$1,000,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project, Said policy shall also contain a "severability of interest" endorsement.

29.1.4 Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

29.1.5 The Association may purchase adequate fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

29.1.6 The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including plate or other glass insurance and any personal property of the Association located thereon.

29.2 Waivers of Subrogation - All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be cancelled or modified without at least ten (10) days prior written notice to all of the insureds, including mortgagees. If requested in writing by one or more of the 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 (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Unit number designation) and first mortgagee. Further, the Association shall require the insurance company or companies providing the insurance coverage described herein to provide each Owner and mortgagee a certificate of insurance in regard to such Owner's individual Unit.

29.3 Other Insurance by Owners - Unit Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the board of directors shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

29.4 Insurance Responsibility of Owner - Insurance coverage on furnishings, including carpet, draperies, wallpaper, and any other items of personality or other personal property belonging to an Owner and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the board of directors, the Association and/or the managing agent shall have no responsibility therefor.

29.5 Notice of Loss - In the event that there shall be any damage or destruction to, or loss of or taking of a Unit which exceeds \$1,000.00 or any damage or destruction to, or loss to or taking of the Common Elements which exceeds \$ 10,000.00, then notice of such damage or loss or taking shall be given by the Association to each first mortgagee of said Unit within ten (10) days after the occurrence of such event and the cost of repair is determined.

30. DESTRUCTION, DAMAGE, CONDEMNATION OR OBSOLESCENCE - ASSOCIATION AS ATTORNEY-IN-FACT: This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any Units, Buildings, Common Elements or other portion of the Project which has been so destroyed, damaged, condemned or becomes obsolete. Title to any 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 as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary or assistant secretary or its other duly authorized officers and agents, shall have full

and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence, or condemnation shall be appointed. Said appointment must be approved by the Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Common Elements and at least eighty percent (80%) of the first mortgagees of record of the Units. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement unless all of the Owners and all first mortgagees agree not to rebuild in accordance with the provisions hereinafter set forth.

30.1 Reconstruction - 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 improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

30.2 Insurance Proceeds Insufficient - If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than eighty percent (80%) of the total replacement cost of all of the Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of the insurance and the proceeds of a special assessment to be made against all of the Owners and their Units. Such special assessment shall be a common expense and made pro rata according to each Owner's interest in the 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, replacement or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in paragraph 24. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this

paragraph. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest as specified herein, the assessment and all reasonable attorneys' fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

30.2.1 For payment of taxes, special assessments liens, and municipal liens, in favor of any assessing entity and the customary expenses of sale;

30.2.2 For payment of the balance of the lien and any first mortgage;

30.2.3 For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;

30.2.4 For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

30.2.5 The balance remaining, if any, shall be paid to the Unit Owner.

30.3 Election Not to Repair - If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than eighty percent (80%) of the total replacement cost of all of the Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Units, provided, however, that Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Common Elements and at least eighty percent (80%) of the first mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary or assistant secretary, the entire Project shall be sold by the Association pursuant to the provisions of this section, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration and this map. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association, according to each Owner's interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. From such 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 lien of any first mortgagee encumbering the Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each Owner's interest in the 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 paragraphs 30.2.1

through 30.2.5. In the event that the damage is to be repaired or reconstruction is to be made then the provisions of paragraph 30.2 shall apply.

30.4 Plan of Renewal - The Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Common Elements in the Project may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the approval of at least eighty percent (80%) of the first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest as specified herein, and all reasonable attorneys' fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in paragraph 30.2.1 through 30.2.5.

30.5 Sale on Obsolescence - The Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Common Elements may agree that the Units are obsolete and that the same should be sold. Such plan or agreement must have the approval of not less than eighty percent (80%) of the first mortgagees of record of the Units. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary or assistant secretary, the entire Project shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration and map. The sale proceeds shall be apportioned among the Owners on the basis of each Owner's interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each account representing one Unit. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner. 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 paragraphs 30.2.1 through 30.2.5.

31. 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 of this paragraph shall apply:

31.1 Proceeds - All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "condemnation award." shall be payable to the Association.

### 31.2 Complete Taking.

31.2.1 In the event that the entire Project is taken, condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The condemnation award shall be apportioned among the Owners on the same basis of each Owner's interest in the Common Elements, provided however, that if a standard different from the value of the property as a whole is employed as the measure of the condemnation award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

31.2.2 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 paragraphs 30.2.1 through 30.2.5.

31.3 Partial Taking - In the event that less than the entire Project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined in the following manner: as soon as practicable the Association shall reasonably and in good faith, allocate the condemnation award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to taking of or injury to the Common Elements, shall be apportioned among the Owners on the basis of each Owner's interest respectively in the Common Elements; (ii) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Unit and to the improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances or as determined by judicial decree. If the allocation of the condemnation award is already established in negotiations, judicial decree or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in paragraphs 30.2.1 through 30.2.5.

31.4 Notification to Mortgagees - The Association shall timely notify each first mortgagee of any Unit of the commencement of the condemnation proceedings or eminent domain proceedings and shall notify said first mortgagees in the event of the taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds \$10,000.00.

32. PROPERTY FOR COMMON USE: The Association may acquire and hold for the use and benefit of all of the Owners, real and personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the Owners in the same proportion as their respective interests in the

Common Elements and shall not be transferable except with a transfer of a Unit. A conveyance of a Unit shall transfer to the grantee ownership of the grantor's beneficial interest in all such property acquired and held by the Association.

### 33. REGISTRATION BY OWNER OF MAILING ADDRESS:

33.1 Register Mailing Address - 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 Association shall be sent by certified mail, postage prepaid, to the address of the Association.

33.2 Single Address for Mailing - In the event any Unit is owned by more than one person, or by a partnership, joint venture, corporation, or other such entity, the Owners thereof shall designate to the Association in writing the name and address of the agent of the Owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed, and upon failure to so designate an agent, the Association shall be deemed to be the agent for receipt of notices to such Owners.

34. RULES AND REGULATIONS: The Association may make reasonable rules and regulations governing the use of Units and of the Common Elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations shall be binding upon all Owners and the Association may take such action, including judicial action as may be necessary to enforce compliance with such rules and regulations and to obtain damages and reasonable attorneys' fees for noncompliance to the extent permitted by law.

35. ADDITIONAL RIGHTS OF HOLDERS OF FIRST MORTGAGE: In addition to any other rights provided in this Condominium Declaration, any first mortgage holder who shall make a request in writing to the Association, shall have the following additional rights:

35.1 Annual Financial Statement - To be furnished a copy of the annual financial statement of the Association, and to be further furnished an audit of the Association, if the same is performed, such documents to be furnished at the same time that they are furnished to the Owners.

35.2 Notice of Amendment - To be given written notice by the Association of any meeting of the Association called for the purpose of considering any amendment, revocation or change to the Condominium Declaration. Such notice shall state the nature of any such change being proposed.

35.3 Notice of Default - To be given written notice of any default by an Owner of a Unit encumbered in favor of the first mortgagee in the performance of any duty or obligation required hereunder or rules and regulations of the Association, which

default remains uncured more than 30 days following notice to the defaulting Owner.

### 36. GENERAL:

36.1 Validity - If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

36.2 Additional Provisions - The provisions of this Declaration shall be in addition and supplemental to the Colorado Common Interest Ownership Act and to all other provisions of law.

36.3 Context of Words - 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.

36.4 Rate of Delinquent Interest - Unless the board of directors of the Association determines otherwise, any and all sums, amounts, expenses, assessments or any funds due and payable as provided in this Declaration which are not paid within ten (10) days of the date that the same are due and payable shall bear interest at the rate of one and one-half percent (1 -1 /2%) per month from the date that the same were first due and payable to the date until paid.

36.5 Enforcement - In the event of any breach by any Owner, or by the Association, of any of the terms and conditions of this Declaration, any supplement hereto, any document provided for herein, the rules and regulations promulgated hereunder, the Articles of Incorporation and Bylaws of the Association, or any resolution, decision, or determination made by said Association- , its members, directors, or officers in accordance with applicable Colorado law, the party not in default shall have the right to bring suit in law, or in equity, or, both, against the party in default to obtain monetary damages for said breach, and/or to obtain injunctive relief, in any court of competent jurisdiction.

37. APPLICABLE LAW: This Declaration is filed in the records of Gunnison County, Colorado and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Declaration shall be in the District Court of Gunnison County, Colorado.

38. ATTORNEYS' FEES: It is agreed that if any action is brought in a court of law by either party to this Declaration as to the enforcement, interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

39. RESERVATION TO ENLARGE.

39.1 Enlargement Rights. Declarant, for itself, its successors and assigns, expressly reserves the right to subject all or any part of the Real Property described in attached Exhibit C ("Supplemental Property") to the provisions of this Declaration at any time within ten years from the date of recording of this Declaration, all as set forth in this paragraph 39. The consent of any existing Owners or mortgagees shall not be required for any such enlargement and expansion and Declarant may proceed with such enlargement and expansion without limitation at its sole option. Declarant may exercise such right to enlarge with respect to different parcels of the Supplemental Property at different times. There is no assurance as to the portions of the Supplemental Property that may be subjected to Declarant's right to enlarge or the order in which those portions may be subjected to the Declarant's right to enlarge. If Declarant exercises its right to enlarge as to a portion of the Supplemental Property, there is no obligation that Declarant exercise its right to enlarge as to all or any other portion of the Supplemental Property.

39.2 Development Rights.

39.2.1 Declarant expressly reserves the right to construct additional Units, Common Elements and Limited Common Elements ("Additional Improvements") on any portion of the Supplemental Property. Declarant further expressly reserves the right to withdraw all or any portion of the Supplemental Property from this Declaration by recording a document evidencing such withdrawal in the records of Gunnison County, Colorado; provided, however, no portion of the Supplemental Property may be withdrawn after a Unit in that portion of the Supplemental Property has been conveyed to a purchaser.

39.2.2 As of the filing of this Declaration and the Condominium Map, the North 50 feet of Lot 12, Block 120, Guerrieri Addition to the Town of West Gunnison, City of Gunnison, Gunnison County, Colorado (the "North 50 feet") constitutes General Common Elements of the Project. Included within the reservation to enlarge under this paragraph 39 are the right of Declarant to utilize the North 50 feet as Supplemental Property for the construction of Additional Improvements, and the right of Declarant to designate the North 50 feet (or any portion thereof) as additional Units or Limited Common Elements by the filing of a supplemental Condominium Map. Any portion of the North 50 feet so designated as additional Units or Limited Common Elements shall cease to constitute General Common Elements upon the filing of the supplemental Condominium Map, without any consent of or notice to any Owner or Mortgage holder. Notwithstanding paragraph 39.2.1, Declarant may not withdraw the North 50 feet (or any portion thereof) from this Declaration, and Declarant may not utilize the North 50 feet (or any portion thereof) for the construction of Additional Improvements unless such Additional Improvements are to constitute a part of WestHaven Condominiums.

39.3 Supplement to Declaration. In the event Declarant elects to submit all or any portion of the Supplemental Property or the Additional Improvements to this Declaration, at such time as construction of the Additional Improvements on the Supplemental Property are substantially complete, Declarant shall record a supplement to this Declaration reallocating the interest in the Common Elements so that the undivided interest in and to the Common Elements appurtenant to each Unit will be apportioned according to the total number of Units submitted to this

Declaration. The interests in the Common Elements appurtenant to each Unit in the Project, as expanded, shall be based upon a fraction, the numerator of which is 1 and the denominator is the total number of Units in the Project as expanded.

39.4 Supplement to Map. Declarant shall, contemporaneously with the supplement to this Declaration, file a supplemental Condominium Map as provided in paragraph 5.2 above.

39.5 Interpretation. The recording of a supplement to this Declaration and the supplemental Condominium Map in the records of Gunnison County, Colorado, shall automatically:

39.5.1 Vest in each existing Owner his reallocated undivided interest in the Common Elements.

39.5.2 Vest in each existing mortgagee a perfected security interest in the reallocated interest in the Common Elements of each existing Owner.

39.5.3 Upon recording of a supplement to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and refer to the Project, as expanded. The Supplemental Property, or any part thereof, or the Additional Improvements, shall be added to and become a part of the Project for all purposes. All conveyances of Units after such enlargement and expansion shall be effective to transfer rights in all Common Elements as enlarged and expanded, whether or not any reference is made to any supplement to this Declaration or the Condominium Map. Reference to this Declaration and the Condominium Map in any instrument shall be deemed to include all supplements to this Declaration and the Condominium Map without specific reference thereto.

39.6 Maximum Number of Units. The maximum number of Units in the Project shall not exceed forty-two (42).

40. BINDING AGREEMENT: It is understood and agreed that this Declaration shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, Declarant has executed this Condominium Declaration the date first above written.

/s/ Lawrence L. Blatt

/s/ Thomas Swineford

STATE OF COLORADO

ss.

County of Gunnison

The foregoing Condominium Declaration was acknowledged before me this 28<sup>th</sup> day of July, 1993, by Lawrence L. Blatt and Thomas Swineford.

Witness by hand and official seal.

My commission expires: August 29, 1995

/s/ Colette A. Perusek  
Notary Public

EXHIBIT A

Condominium Declaration  
for  
WestHaven Condominiums

Lots 12 through 17, both inclusive, Block 120, GUERRIERI ADDITION TO THE TOWN OF WEST GUNNISON, according to the recorded plat thereof,

City of Gunnison,  
County of Gunnison,  
State of Colorado.

EXHIBIT B

Condominium Declaration  
for  
WestHaven Condominiums

<u>Unit</u>	<u>Undivided Fractional Ownership Interest in Common Elements:</u>
310	1/4
312	1/4
314	1/4
316	1/4

EXHIBIT C

Condominium Declaration  
for  
WestHaven Condominiums

Lots 1 through 11, both inclusive, North 50 feet of Lot 12, and Lots 32 through 49, both inclusive, Block 120, GUERRIERI ADDITION TO THE TOWN OF WEST GUNNISON, according to the recorded plat thereof,

City of Gunnison,  
County of Gunnison,  
State of Colorado.