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CONDOMINIUM DECLARATION

FOR

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AVON TOWN SQUARE PHASE II COMMERCIAL CONDOMINIUMS

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CONDOMINIUM DECLARATION
FOR
AVON TOWN SQUARE PHASE II COMMERCIAL CONDOMINIUMS

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CONDOMINIUM DECLARATION

FOR

AVON TOWN SQUARE PHASE II COMMERCIAL CONDOMINIUMS

THIS CONDOMINIUM DECLARATION is made by A.T.S. Venture (the Declarant) pursuant to the Condominium Ownership Act (C.R.S. 1973, § 38-33-101, *et seq.*), as amended, (the Act) as it exists on the date of execution and recording hereof. Any subsequent amendments to the Act, to the extent they are required to apply to existing Declarations shall be deemed applicable hereto. The Condominium Project is located entirely within Eagle County, Colorado.

SUBMISSION TO CONDOMINIUM OWNERSHIP

Declarant, for itself, its successors and assigns, hereby submits to Condominium Ownership pursuant to the Act and the generally applicable laws of the State of Colorado, the real property known and described as:

Lot 2, Avon Town Square Subdivision according to the Amended Final Plat thereof, Eagle County, Colorado, including all appurtenant rights and obligations pursuant to that certain Cross Easement recorded January 26, 1994 at Reception No. 526855, of Eagle County, Colorado, and subject to all easements and rights of way set forth on Exhibit B attached hereto and incorporated herein by reference.

ARTICLE I

DEFINITIONS

Section 1. "ASSESSMENT RATIO" in respect of any Unit means the percentage of the total annual, supplementary, special or other assessments generally applicable to the Unit as set forth in the Assessment, Common Element and Voting Ratio Schedule attached hereto and incorporated herein as Exhibit A, and as said schedule may be amended from time to time. As an additional building or buildings are added or as Units are combined, subdivided or otherwise modified as allowed by this Declaration, the Assessment Ratio of Units subject to this Declaration shall change to reflect such addition, combination, subdivision or modification. The description and number for each Unit as set forth in Exhibit A to this Declaration and in any Supplement thereto shall be binding upon each Owner. At all times the combined Assessment Ratios of all constructed units shall equal one hundred percent (100%). Assessment ratios may take into account the different or variable use by Units of limited common elements or services and utilities such as heating and air conditioning. The Assessment Ratios may be modified or amended from time to time by the Association, provided, however, that any such modification or amendment shall be approved by a favorable vote of at least sixty-seven percent (67%) of the owners.

Section 2. "ASSOCIATION OF UNIT OWNERS" or "ASSOCIATION" means the Avon Town Square Phase II Commercial Condominium Association, Inc., a Colorado non-profit corporation, the Articles of Incorporation, By-Laws and Rules of which shall govern the administration of this condominium project.

Section 3. "BOARD" shall mean the Board of Directors of the Association.

Section 4. "BUILDING" shall mean the building or buildings in which a Unit or Units are located as shown on the Condominium Map. The Declarant or the Association may, by written

agreement, designate a name for the building or buildings other than "Avon Town Square." The Association shall be bound by the terms of any such agreement entered into by the Developer.

Section 5. "CONDOMINIUM UNIT" shall mean an individual air space Unit together with the undivided interest in the Common Elements appurtenant to such Unit. See Exhibit A attached hereto and the Map.

Section 6. "COMMON EXPENSES" means expenditures made or liabilities incurred by the Association on its own behalf or for or on behalf of Condominium Unit Owners, together with any allocation to reserves.

Section 7. "COMMON EXPENSE LIABILITY" means the liability for common expenses allocated to each Unit. See Exhibit A attached hereto.

Section 8. "DECLARANT" means A.T.S. Joint Venture, or any successor or assign designated as a successor Declarant.

Section 9. "DECLARATION" shall mean and refer to this Condominium Declaration, and any Supplement or Amendment thereto, and shall include all Maps or Plats recorded in conjunction herewith.

Section 10. "DEVELOPMENT RIGHTS" means those rights reserved to the Declarant to construct one or more additional buildings containing Units and general or limited common elements; to create units, additional common elements or limited common elements; and/or to subdivide or combine units or convert units into common elements on the property, if any.

Section 11. "FIRST MORTGAGE" shall mean and refer to any mortgage, deed of trust or other security device having priority over all other mortgages, deeds of trust or other security devices.

Section 12. (a) "COMMON ELEMENTS" shall mean and include the real property described in the submission paragraph above and all improvements now or hereafter constructed thereon, except the Units. References herein, if any, to "General Common Elements" shall mean that portion of the Common Elements, exclusive of the Limited Common Elements.

(b) "GENERAL COMMON ELEMENTS" except as modified by designation of "Limited Common Elements", shall include: the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of such building or buildings; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning, and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; and all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

Section 13. "LIMITED COMMON ELEMENTS" shall mean and refer to any portion of the Common Elements designated in this Declaration or the Map as reserved for exclusive use by the owner or owners of a particular Condominium Unit or Condominium Units. Limited Common Elements reserved for the use of more than one Unit may also be referred to as "Multiple Unit Limited Common Elements." Underground or covered parking within a building may be designated as a Limited Common Element. Owners of Units to which underground parking spaces are designated or assigned as Limited Common Elements shall have the right, upon notice to the Association, to lease, assign or transfer the right to use such parking spaces to other owners or tenants in the Project. For purposes of this section only, "Project" shall include the "Property" and Avon Town Square Commercial Condominiums, an adjacent condominium development.

Section 14. "CONDOMINIUM MAP" or "MAP" shall mean and include the survey of the land locating thereon all of the improvements, the floor and elevation plans depicting the Condominium Units and any amendments or supplements thereto. The description or delineation of the Units as shown on the Condominium Map is incorporated herein by reference.

Section 15. "MORTGAGEE" shall mean the holder of a first deed of trust, or first mortgage encumbering a Unit.

Section 16. "OWNER" shall mean a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, owning one or more Units.

Section 17. "PARKING SPACE" shall mean an exterior parking space located on the Common Elements or available by easement, to be used for parking one motor vehicle. Underground or covered parking designated as a Limited Common Element shall be excluded from this definition.

Section 18. "PROPERTY" shall mean and refer to the real property subject hereto located in the County of Eagle, State of Colorado.

Section 19. "RULES" shall mean and refer to the rules and regulations adopted by the Board from time to time.

Section 20. "INDIVIDUAL AIR SPACE UNIT" OR "UNIT" means an individual air space unit (as that term is defined in the Act) which is contained within the perimeter boundaries, floors, and ceilings, (i.e., one or more enclosed rooms) occupying all or part of a floor or floors in a building as shown on the Map, and shall include the lath, furring, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof. The Unit shall include window frames, door frames and floor coverings and any heating elements, utility lines, pipes and similar utility fixtures located within the unfinished perimeter walls, floors and ceilings, but shall not include any structural components of a Building or utility service lines serving more than one Unit (except Units which have been combined), any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies and patios. All exterior doors and windows or other fixtures designed to serve a single unit, but located outside that Unit's boundaries, are Limited Common Elements allocated to that Unit.

ARTICLE II

DESCRIPTION OF CONDOMINIUM UNITS

Section 1. CONDOMINIUM MAP. A Condominium Map shall be filed for record prior to the final conveyance of the first Condominium Unit. The Condominium Map shall consist of and set forth (1) the legal description of the surface of the Property; (2) the linear measurement and location of the Building, with reference to the exterior boundaries of the Property; (3) floor plans and elevation plans of the interior of the Building, including the Units, showing the location, designation and the linear dimensions of each Unit, the structural and supporting walls, the common walls between Units, or if no such common walls exist, the perimeter boundaries of the Unit, the location of any structural or supporting components within Units, the designation of the Limited Common Elements, and any other information required by the Act. In interpreting the Map, the existing boundaries of each Unit as constructed or in respect of a combination or separation of Units, then as so modified, shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Map, from time to time, to conform the same to the actual physical location of the constructed improvements and to any changes, modifications or alterations, including any new buildings on the property. In that regard, it is Declarant's intent to construct The Project, consisting of two (2) buildings, in separate stages, with a second building to be constructed sometime after completion of the first building.

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Section 2. DIVISION OF PROPERTY INTO CONDOMINIUM UNITS. The real property and improvements constructed thereon may be divided into a maximum of _____ fee simple estates, each such estate consisting of one Unit together with the appurtenant undivided percentage interest in the Common Elements specified on the attached Exhibit A, which by this reference is made a part hereof. Title to the Common Elements shall be held by the Owners as tenants-in-common. Each Condominium Unit shall be identified on the Map or amended Map by the numerical designation shown on Exhibit A.

Section 3. INSEPARABILITY OF A CONDOMINIUM UNIT - COMBINATION OF CONDOMINIUM UNITS. Each Unit and the undivided interest in the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Condominium Unit. Each Owner shall have the right to physically combine adjacent Units and to construct such improvements and alter as much of the Common Elements as is necessary for this purpose, provided that the same is done in conformity with all local building codes, governmental laws, ordinances, rules and regulations appurtenant thereto, and the cost of any such alteration is borne exclusively by the Owner causing such alteration. If Units are combined, such Units may thereafter be separated physically only if restored to their original configuration as shown on the Map. The physical combination or separation of previously combined Units shall not alter the legal description of the Units, which shall retain their status as separate Units. Upon the combination of one or more Units by alteration or removal of a common wall, floor or ceiling, the perimeter boundary of such Units shall be the centerline of such previously existing wall, floor or ceiling. Upon the physical separation of one or more previously combined Units by the addition or closure of a common wall, floor or ceiling, the perimeter boundary of such Units shall be the unfinished wall, floor or ceiling. No amendment of the Map shall be required to effect the combination or separation of Units in accordance with this Section 3. Notwithstanding anything to the contrary contained herein, no combination of Units or separation of combined Units shall be performed unless the plans therefor have been submitted to the Association, which shall have the authority to require the posting reasonable security to ensure completion of such improvements, and such plans have been approved by all governmental authorities having jurisdiction thereof.

No original unit, except basement level storage units, may be subdivided without the express written consent of the Association and of all mortgagees holding security interests in the Unit. Any Owner undertaking to subdivide an original Unit shall, in addition to all construction costs incident to the subdivision, be required to bear all costs incident to amending the Map and this Declaration to account for any revised percentage interest in the common elements and for the new Unit configurations.

Section 4. DESCRIPTION OF A CONDOMINIUM UNIT. Every contract for the sale of a Condominium Unit and every other instrument affecting the title to a Condominium Unit may describe that Condominium Unit by the Unit designation shown on the Condominium Map and Exhibit A with appropriate reference to the Condominium Map and this Declaration, as each appears in the records of the County Clerk and Recorder of the County of Eagle, Colorado, in the following fashion:

Condominium Unit _____, Avon Town Square, Phase II, Commercial Condominiums, according to the Condominium Map appearing in the records of the Clerk and Recorder of the County of Eagle, Colorado in Book 683 at Page 605, Reception No. 579611, as defined and described in that Condominium Declaration for AVON TOWN SQUARE, PHASE II, COMMERCIAL CONDOMINIUMS, appearing in such records in Book 683 at Page 606, Reception No. 579612.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Condominium Unit and all limitations on such ownership as described in this Declaration.

Section 5. SEPARATE ASSESSMENT AND TAXATION NOTICE TO ASSESSOR. Declarant shall give written notice to the Assessor of the County of Eagle, Colorado, of the condominium ownership of this Property, so that each Unit and its percentage of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation, as provided in C.R.S., 1973, § 38-33-104, as amended.

Section 6. TITLE. A Condominium Unit may be held and owned by one or more persons, firms, corporations, partnerships, associations or other legal entity, in any real property tenancy relationship recognized under the laws of the State of Colorado.

Section 7. NONPARTITIONABILITY OF COMMON ELEMENTS. The Common Elements shall be owned in common by all of the Owners of the Condominium Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements. No Unit may be partitioned or subdivided, except as provided in Article II, Section 3 above.

Section 8. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION. No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Owner thereof or his agent or his contractor or subcontractor shall be the basis for filing a lien against the Condominium Unit of any other Owner not expressly consenting to or requesting the same, or against the undivided interest in the Common Elements owned by such other Owners. 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 Common Elements for construction performed or for labor, materials, services or other products incorporated in or otherwise attributable to the Owner's Condominium Unit.

ARTICLE III

OWNERS' PROPERTY RIGHTS AND LIMITATIONS

Section 1. SINGLE UNIT LIMITED COMMON ELEMENTS. Subject to the provisions of this Declaration, each Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to his Unit. Such Limited Common Elements are as follows: Interior corridors shall be used exclusively by the Owners of the respective Units which such corridors serve. Any other Limited Common Elements described herein and as shown on the Condominium Map shall be appurtenant to the Units so designated on the Condominium Map. Any balconies or similar areas accessible from one or more than one but less than all Units, shall be deemed Limited Common Elements. Underground or covered parking areas may be designated as Single or Multiple Unit Limited Common Elements. No reference to such Limited Common Elements need be made in any deed, deed of trust, instrument of conveyance or other instrument concerning a Condominium Unit; and any such deed, deed of trust, instrument of conveyance, or other instrument concerning a Condominium Unit shall be deemed to convey the right to the exclusive use of such Limited Common Elements without reference thereto.

Section 2. MULTIPLE UNIT LIMITED COMMON ELEMENTS. Specified portions of the Common Elements shall be designed on the Map as Multiple Unit Limited Common Elements. The portions of the Common Elements so designated shall be reserved for the limited use of the owners of the Units to which such Common Elements may be appurtenant, their employees, invitees and guests. Multiple Unit Limited Common Elements may include, but are not necessarily limited to reception areas, balconies, restrooms or conference rooms located on a specified floor, or separate utility or mechanical components used by or accessible to some, but less than all of the Units.

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Owners of Units for whose benefit Single Unit or Multiple Unit Limited Common Elements are designated may be assessed separate and additional amounts to pay for the maintenance, repair, replacement of furniture and equipment or other costs associated with such Limited Common Elements.

The Association shall have the power to regulate and control use of the Single and Multiple Unit Limited Common Elements and to the extent it will not substantially interfere with the use by designated Unit owners, the Association may authorize use of Multiple Unit Limited Common Elements by others for a fee or fees to be set by the Association. Any such fees shall be earmarked and used for the maintenance, repair and replacements associated with the Multiple Unit Limited Common Elements.

Reallocation of Multiple Unit Limited Common Elements may be effected as authorized by law.

Section 3. USE OF GENERAL COMMON ELEMENTS. Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner, his guests and invitees, may, subject to the Rules of the Association, use the General Common Elements in common with the other Owners in accordance with the purpose for which they were intended, without hindering or encroaching upon the lawful rights of the other Owners.

Section 4. LIMITATIONS. Except as may be required by law, no General Common Elements may be conveyed to any person or entity other than Unit Owners (in undivided fractional interests). The General Common Elements, subject to easements and rights-of-way of record as shown as Exhibit B, are described in Article I, Section 12, hereto, and on the Map.

After completion of all stages of this project, General Common Elements may become Limited Common Elements only as necessary to allow combinations of Units as allowed herein, or upon an affirmative vote of the owners of Units comprising two-thirds (2/3) of ownership of the Common Elements.

ARTICLE IV

EASEMENTS

Section 1. ENCROACHMENTS. If any portion of the Common Elements now or hereafter encroaches upon any Unit, 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 the Unit now or hereafter encroaches upon the Common Elements or upon an adjoining Unit or Units, a valid easement for the encroachment and for maintenance of same, so long as it stands, shall and does exist. For title and other purposes, such encroachments and easements shall not be considered or determined to be encumbrances on either the Common Elements or Units.

Section 2. BLANKET EASEMENTS. There is hereby created a blanket easement upon, across, over and under all of the General Common Elements for pedestrian and vehicular ingress and egress to and from the Building and Units, provided the same is confined to walks, ways, drives, courtyards and roadways designed for such purposes, and for the installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone and electricity. An easement is granted to all police, fire protection and ambulance personnel, and all similar persons to enter upon the General Common Elements and Units in the performance of their lawful duties. An Easement is granted to the Association to enter in, onto, above, across or under the Common Elements and any Unit to perform the duties of maintenance and repair to any Unit or the Common Elements.

Section 3. EASEMENTS FOR EMERGENCY INGRESS AND EGRESS. The Association through its duly authorized agents shall have the right in case of any emergency originating in or threatening any unit or the Common Elements to enter any Units as is necessary to locate and remedy such emergency without request. An Owner shall, upon request in advance at a time convenient to the Owner, permit entry into a Unit for the purpose of performing non-emergency installation, alteration, or repair to the mechanical, electrical or utility services, which, if not performed, would impair the use of other Units. Duplicate keys to the doors of each Unit shall be kept by the Association.

Section 4. QUIET ENJOYMENT BY OWNERS. Any right of quiet enjoyment by Unit Owners created by this Declaration shall be subject to enforcement of the provisions of this Declaration, applicable provisions of the Act, easements and rights of way of record, and the right of the Association to make, publish and enforce reasonable rules and regulations.

Section 5. RECORDED EASEMENTS AND RESERVATIONS. This project is subject to the recorded easements, rights of way, limitations, restrictions and reservations set forth in Exhibit B, which is attached to this Declaration and incorporated herein by reference.

ARTICLE V

THE ASSOCIATION

Section 1. DUTIES OF ASSOCIATION. The administration and management of the Common Elements shall be vested exclusively in the Avon Town Square Phase II Commercial Condominium Association, Inc., a Colorado nonprofit corporation, (the "Association"). An Owner of a Condominium Unit, upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of his ownership. The Association, subject to any voting requirements specified in the Act, or in its Articles of Incorporation or By-Laws, shall have the following duties, rights and powers:

(a) To budget for and collect monthly or periodic assessments from Owners; to collect delinquent assessments by suit or otherwise; and to collect such other assessments as are authorized herein.

Within thirty (30) days after the adoption of any proposed budget, the Association's Board shall mail by ordinary first class mail, or otherwise deliver, a summary of the budget to all unit owners and the Board shall set a date for a meeting of the owners to consider ratification of the budget. The meeting shall be held not less than fourteen (14) nor more than sixty (60) days after mailing or delivery of the summary. Unless sixty percent (60%) of the owners reject the budget, it shall be deemed ratified, regardless of whether a quorum of owners is present. In the event of a rejection of the budget the periodic budget last ratified shall remain in force until such time as a subsequent budget is proposed and ratified as provided for herein.

(b) From funds collected, to provide for maintenance, construction, management, insurance, decoration, landscaping and care of Association property and Common Elements, and such other expenses as are enumerated in this Declaration, the Association By-Laws, or authorized by law.

(c) To lease, acquire and sell real or personal property in pursuance of its obligations.

(d) To enter into and upon the Units when necessary in connection with the duties outlined in this Declaration.

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(e) To enjoin or seek damages from or assess fines (as an Extraordinary Assessment) against the Owners for violation of the Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association, and the Rules promulgated by the Association by any Owners, their guests or tenants.

(f) To employ workmen and others; to contract for services to be performed, including those of a manager; to purchase supplies and equipment; to enter into contracts, and generally to have the powers of a commercial property manager in connection with the matters herein set forth.

(g) To protect and defend the Common Elements from loss and damage by fire or otherwise.

(h) To employ counsel, attorneys, accountants and auditors in connection with legal or accounting matters of the Association and in connection with any audit of its books and records, which audit shall be available to Owners and holders of deeds of trust for inspection at the Association office, as hereinafter provided.

(i) To deposit funds in the hands of the Board which are not necessary for immediate disbursements in insured savings accounts of National or State Banks or Savings and Loan institutions earning the standard rate of interest.

(j) To file legal protests, formal or informal, with authorities against the granting by authorities of zoning ordinances or variances concerning any property within a reasonable proximity of the Properties which might affect the value of any Owner's interest in the Common Elements.

(k) To adopt Rules in accordance with the By-Laws for the regulation and operation of the Common Elements including, but not limited to, regulations governing the use, occupancy, conservation, maintenance, and enjoyment of the Common Elements, and the regulation of parking.

(l) To suspend any Owner's right to the use of the Common Elements during any period in which such Owner is delinquent in payment of assessments.

(m) To grant easements over, across and under the General Common Elements for public utilities and other public purposes.

(n) To exercise any power not specifically enumerated herein, but authorized by the Non-Profit Corporation Code of Colorado and/or the Act.

Section 2. MEMBERSHIP IN ASSOCIATION. The following shall be entitled to membership in the Association:

Each Owner shall automatically be a Member of the Association. Ownership of a Condominium Unit shall be the sole qualification for membership. Upon the sale or transfer of a Condominium Unit by an Owner, that person's membership shall terminate and shall be automatically transferred to the purchaser or transferee.

Section 3. VOTING RIGHTS IN ASSOCIATION. There shall be one class of Members to-wit:

Members shall be all the Owners, including the Declarant, and shall be entitled to the number of votes specified on Exhibit A attached hereto. Ownership interests in use of common elements shall not be included in the computation of voting rights.

Where Condominium Units are owned by more than one Owner, then one such person shall be designated as the voting member in respect of such Unit, by a written instrument delivered to the Secretary of the Association. In the absence of such designation, the Board may disallow the votes cast by such Owner. When the same person owns more than one Condominium Unit, the Owner shall be entitled to the requisite number of votes on Association matters for each Condominium Unit owned. The votes of any Owner not a natural person may be cast by any designated representative of such Owner which designation shall be in writing and delivered in the Board prior to any such vote. In the event of such designation, the Board may disallow the votes cast by such Owner.

ARTICLE VI

MAINTENANCE

Section 1. OWNERS' RESPONSIBILITY OF MAINTENANCE. Each Owner shall be responsible for maintenance, repair, alteration and remodeling of the windows, doors, interior finishing walls, the materials (such as, but not limited to, plaster, gypsum dry walls, paneling, brick, stone, paint, wall and floor tile and flooring, but not including the subflooring) on the finished surfaces of his Unit. All fixtures and equipment installed within the Unit shall be at a point where the utility lines, pipes, wires, conduits or systems enter the Unit shall be maintained and kept in repair by the Owner thereof. Such right to repair, alter and remodel shall be subject to the obligation to replace any finishing materials removed with similar or other types or finishing materials of equal or better quality. An Owner shall do no act nor any work within the Unit that will impair the structural soundness or integrity of any Building or impair any easement or right of use. Each Owner shall further be solely responsible for the maintenance and repair of the Limited Common Elements appurtenant solely to such Owner's Unit, but if such Limited Common Elements are appurtenant to more than one Unit, then maintenance and repair thereof shall be performed by the Association. The Units and the Limited Common Elements appurtenant thereto shall be kept in a clean and sanitary condition at all times.

Section 2. ASSOCIATION DUTY OF MAINTENANCE. Except as set forth in Section 1, maintenance, repair or replacement to the Common Elements, whether located within or without the Units, shall be made by the Association. If such maintenance, repairs and replacements are necessitated by the negligence, misuse or neglect of an Owner, his guests, invitees or licensees, such expenses shall be charged to such Owner as an Extraordinary Expense.

ARTICLE VII

USE AND OTHER RESTRICTIONS

Section 1. COMPLIANCE WITH PROVISIONS OF DECLARATION AND BY-LAWS. Every Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, By-Laws and Rules of the Association, and the decisions and resolutions of the Board of Directors adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, maintainable by the managing agent or Board of Directors in the name of the Association on behalf of the Owners or, in a proper cause, by an aggrieved Owner.

Section 2. PARKING SPACES. Each Owner is entitled to the non-exclusive right to use, in common with other owners, visitors, and guests the exterior parking spaces which are part of the Limited Common Elements or available by easement, subject to Rules adopted by the Association. To the extent that certain Limited Access, Underground or Covered Parking is available for use by owners or tenants, the Association, or the owner of such a Unit having rights to

such parking spaces if privately owned, may impose such restrictions as may be necessary to control the use of such spaces, including but not limited to rental rates. To the extent such Underground or covered parking spaces are Limited Common Elements, the Owners of the Units to which such spaces are assigned may control their use, subject to the limitations of Article I, Section 13.

Section 3. USE AND OCCUPANCY.

(a) All Units shall be used and occupied solely for general office or commercial purposes (including the sale of goods or services) by the Owner and the Owner's tenants. No Unit may be used for residential purposes.

(b) All use and occupancy of the Common Elements shall be governed by the Declaration, By-laws and Rules of the Association.

(c) Nothing shall be done within or on the Common Elements or Units which could be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governmental body.

(d) No noxious or offensive activity shall be carried on, in or upon the Common Elements or in the Units.

(e) No animals of any kind shall be raised, bred or kept on any of the Common Elements or in the Units.

(f) Any rental of a Condominium Unit or of an underground or covered parking space which is a Limited Common Element, shall be pursuant to a written lease, a copy of which shall be furnished the Association prior to its effective date.

(g) No signs may be placed upon the Common Elements or upon the exterior portion of a Unit unless the same complies with sign standards adopted by the Board from time to time. Each Owner shall have the right to be listed in any directory listing all Owners or lessees and in any building directory, and shall have the right to affix one sign designating the name of the occupant to the entryway door of the Unit.

ARTICLE VIII

ASSESSMENTS

Section 1. COVENANT TO PAY ASSESSMENTS. Each Owner, by acceptance of a deed, agrees to pay the Association assessments and charges established and collected from time to time as herein provided. Such assessments, together with interest, the cost of collection, and attorney's fees shall be charged to the Condominium Units and shall be a continuing lien upon the Condominium Unit against which each assessment is made in the event of delinquency in payment. Such assessment, together with interest, costs, and reasonable attorney's fees also shall be the personal obligation of the person who was the Owner, or the persons jointly and severally who were the Owners at the time when the assessment was made. Assessments against each Condominium Unit shall commence as of the date of the transfer of title to such Condominium Unit by Declarant to a purchaser thereof.

Section 2. USE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the acquisition, construction, management, maintenance and care of the Common Elements, (except to the extent that owners are responsible for maintenance of Single Unit Limited Common Elements as provided in Article VI, Section 1), and for the performance of all other duties and obligations of the Association pursuant to this Declaration, including but not

limited to the following: the provision of services and facilities related to the use and enjoyment of the Common Elements; the provision of gas, electricity, water and sewage disposal to the Units to the extent the same is not separately metered or charged to the Units as hereinafter set forth; maintenance, repair and replacement of utilities; paving and lighting walkways, and other facilities; snow removal; grounds upkeep; sprinkler system repair and maintenance; landscaping; garbage pickup; administration expenses; rental and acquisition of real or personal property; establishment and maintenance of a cash reserve and a sinking fund for all of the foregoing purposes, including but not limited to an adequate reserve fund for the acquisition, construction, maintenance, replacement and repair of those portions of the Common Elements which must be replaced on a periodic basis; and such other and further expenses as the Association, in its opinion, shall determine to be necessary and desirable.

Section 3. ANNUAL ASSESSMENTS. Annual Assessments may be made for the purposes of providing funds for the normal operations of the Association, including but not limited to, maintenance and repair of the Common Elements, salaries, costs of operating the Association, insurance premiums, management fees, office costs, maintenance reserves, amounts necessary to pay deficits or debts incurred by the Association, water and sewer rents and fees, gas and electricity furnished to the Buildings to the extent the same are not separately metered, real estate taxes and other special assessments on the Common Elements, and funds for any other purpose or purposes of the Association provided for herein. The total amount of money required to be raised by Annual Assessments for each fiscal year shall be the amount, as determined by the Board, necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in such fiscal year, including the payment of deficits from prior fiscal years, providing reasonable reserves, and providing a reasonable carryover reserve for the following fiscal year. To determine the amount required to be raised by Annual Assessments for any fiscal year, the Board shall, prior to commencement of such fiscal year prepare an annual budget showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses which will be payable, the estimated income and other funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by Annual Assessments to cover such costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a summary or a copy of such proposed budget to each Owner, as provided in Article V, Section 1(a) and, upon request, to any Mortgagee. Based on such budget, and the required ratification thereof, the Board of Directors shall determine the amount of the Annual Assessments for each Condominium Unit for such fiscal period as provided in Section 7 of this Article VIII.

Section 4. SUPPLEMENTARY ASSESSMENTS. In the event that the Board shall determine, at any time or from time to time, that the amount of the Annual Assessment is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more Supplementary Assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each Supplementary Assessment, the Board shall revise the annual budget for such fiscal year or prepare a new budget, a copy of which shall be furnished to any Owner or on request, to any First Mortgagee. Based on such revised or new budget, the Board may make a Supplementary Assessment for such fiscal year, the amount of which shall be determined by the Board as provided in Section 7 of this Article VIII. The Supplementary Assessment budget shall be subject to the ratification procedure set forth in Article V, Section 1(a).

Section 5. EXTRAORDINARY ASSESSMENTS. In the event the Association shall maintain or repair any Unit pursuant to Article VI, Section 2, or advance any funds as a result of an Owner's failure to perform any duty to be performed by such Owner hereunder, the Association may make an Extraordinary Assessment against such Unit and the Owner thereof, to recover the actual amounts expended by the Association in making, or causing to be made, such repair and/or in maintaining such Unit, or performing such duty plus an amount, to be determined by the Board, not to exceed twenty-five (25%) per cent of the total amount thereof to cover overhead and administrative costs of the Association. The Association may also make an Extraordinary

Assessment against an Owner and his Condominium Unit to recover any amounts paid by Association for which an Extraordinary Assessment or fine or charge may be levied as provided in this Declaration or in By-Laws, or Rules of the Association. Extraordinary Assessments levied against one or more, but less than all of the Units shall not be deemed to be periodic assessments and no ratification shall be required.

Section 6. SPECIAL ASSESSMENTS. Special Assessments may be made for the purposes of raising funds for capital improvements and for any other Association purpose for which Annual or Supplementary Assessments may not or have not been made. Whether to make a Special Assessment and the amount thereof per Unit shall be determined by the Board; provided that no Special Assessment shall be valid unless ratified as provided in Article V, Section 1(a) at any annual meeting of the Members of the Association or at any special meeting thereof called for the purpose of considering such Special Assessment.

Section 7. BASIS FOR ASSESSMENTS. All Annual Supplementary and Special Assessments shall be allocated to each Condominium Unit in accordance with each Condominium Unit's Assessment Ratio.

Section 8. ASSESSMENTS PAYABLE MONTHLY. The Annual Assessment for each Unit shall be payable in twelve (12) equal monthly installments due on the first day of each month, unless the Board shall adopt some other payment schedule. Special and Supplementary Assessments shall be payable as provided in the resolutions authorizing the same. Extraordinary Assessments shall be due upon demand by the Association thereof. All installments of Annual, Supplementary and Special Assessments shall be paid without any set-off or diminution of any kind.

Section 9. LIEN FOR NONPAYMENT OF COMMON EXPENSES. All sums assessed against a Condominium Unit, but unpaid, including interest thereon at two per cent (2%) per annum above the prime rate of the First Bank of Eagle, as adjusted from time to time, shall constitute a lien on such Condominium Unit superior to all other liens and encumbrances except:

- (a) Tax and special assessment liens in favor of any assessing authority; and
- (b) All sums unpaid on any First Mortgage of record, including all unpaid sums as may be provided for by such encumbrance, and including additional advances made thereon prior to the filing of such lien.

To evidence such lien, the Board of Directors or managing agent may 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 notice shall be signed by one of the Board of Directors or by the managing agent or by counsel for the Association and shall be recorded in the Office of the Clerk and Recorder of Eagle County, State of Colorado. Such lien shall attach from the date the unpaid assessment was made, and may be enforced by foreclosure on the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property and shall encumber all rents and profits issuing from the Condominium Unit. In any such foreclosure, the Owner shall be obligated to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and the reasonable attorneys' and receiver fees of the Association which shall be recoverable out of the foreclosure proceeds. The Owner shall also be required to pay the Association a reasonable rental for the Condominium Unit during the period of redemption, which payment shall be covered by the lien, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the Condominium Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same. Nothing herein shall be deemed to limit or diminish any statutory lien for assessments, costs, damages or attorneys fees, to which the Association is otherwise entitled.

Any encumbrancer holding a lien on a Condominium Unit may pay any unpaid Assessments payable with respect to such Unit, and upon such payment such encumbrances shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrancer.

Section 10. INITIAL CAPITAL CONTRIBUTION. The Association may levy and collect from each Owner at the closing when the Owner acquires a Condominium Unit, a sum equal to not more than three regular monthly assessments apportioned to the Condominium Unit (the Capital Contribution). Said sum may be used by the Association for working capital, for application against a delinquent account of an Owner, or for emergency needs, and any balance shall be refunded to the Owner (except as hereinafter provided) upon the sale or transfer of the Condominium Unit less any amount then due by said Owner to the Association. Such amount may be transferred to a new Owner of such Condominium Unit by a settlement sheet adjustment between seller and purchaser. Any deficiency in an Owner's Account shall be promptly restored upon request by the Board to maintain an amount equal to one hundred per cent (100%) of the original Capital Contribution for such Condominium Unit. The existence of this reserve shall in no way relieve any Owner from the duty to pay assessments when due.

Section 11. LIABILITY FOR COMMON EXPENSES UPON TRANSFER OF CONDOMINIUM UNIT. Notwithstanding the personal obligation of each Owner of a Condominium Unit to pay all assessments thereon and notwithstanding the Association's perpetual lien upon a Condominium Unit for such assessments, all successors in interest to the fee simple title of a Condominium Unit shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees against such Condominium Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor; provided, however, that a successor in interest to the fee simple title of a Condominium Unit shall be entitled to rely upon the existence and status, or absence thereof, of unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest as hereinafter set forth. Upon the written request of any owner or any mortgagee or prospective mortgagee or grantee of a Condominium Unit, and upon the payment of a reasonable fee not to exceed Fifty Dollars (\$50.00), the Association, by its managing agent or Board of Directors, shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to the subject Condominium Unit, the amount of the current monthly assessment and the date such assessment becomes due, and the amount of credit for advanced or for prepaid items which statement shall be conclusive upon the Association in favor of all persons who rely thereupon in good faith. Unless such request for a statement of indebtedness is complied with within twenty (20) days, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the interest of the person making such request.

Mortgagees of Condominium Units which acquire title to a Condominium Unit as a result of obtaining a deed in lieu of foreclosure and purchasers of Condominium Units at foreclosure sale foreclosed pursuant to any first mortgage shall not be liable for any Assessment accruing prior to the time when such mortgagee or purchaser becomes the owner of said Condominium Unit as a result of the acceptance of a Deed in Lieu of Foreclosure, or acquires an interest pursuant to the purchase at the foreclosure sale.

ARTICLE IX

INSURANCE

Section 1. BLANKET POLICY. The managing agent or Board of Directors shall obtain and maintain at all times fire insurance and extended coverage and vandalism and malicious mischief insurance issued in an amount of the full insurable replacement cost, less applicable deductibles, from time to time, of the Common Elements, including the Units and fixtures initially

installed therein by Declarant (but excluding Unit finish items such as paneling, floor covering, furniture, furnishings and other personal property supplied by an Owner), and including all such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Association as the insured, which policy or policies shall include the standard, non-contributory mortgagee clause, and shall further provide that it cannot be cancelled, materially altered or allowed to lapse except upon ten days' prior written notice to each Owner and First Mortgagee. The managing agent or Board of Directors 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 with any provision of such policy, including payment of the insurance premium applicable to the 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 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. In the event that an Owner's use of or improvement to a Unit increases the cost of premiums for insurance, the Association may levy an Extraordinary Assessment against such Owner's Unit to pay such increased cost. No Owner shall obtain insurance which shall impair the Association's ability to insure or realize on insurance policies obtained by the Association. Any diminution in proceeds received by the Association resulting from such other insurance shall be a charge upon such Owner's Condominium Unit and an Extraordinary Assessment levied therefor.

Section 2. INSURANCE FOR THE ASSOCIATION. The Association shall be required and empowered to obtain and maintain the following insurance:

(a) Insurance coverages upon the Common Elements, as recited above, and all property owned or leased by the Association;

(b) Comprehensive general liability insurance in a minimum amount of \$1,000,000.00 per single occurrence and Workmen's Compensation coverage upon employees and other liability insurance insuring the Association, the Board, Managers and agents in connection with the Common Elements. The Declarant shall be included as an additional insured in its capacity as a Unit Owner on the general liability insurance, and the Unit Owners shall also be additional insureds to the extent of claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) Such other insurance as the Board may deem desirable for the benefit of the Owners.

(d) All insurance shall comply with the requirements of the Act.

Section 3. INSURANCE PROCEEDS SUBORDINATE TO MORTGAGE. In the event of substantial damage to, or destruction of the major portion of the Common Elements, and if the Common Elements are not restored, any distribution of insurance proceeds hereunder shall be made, pro rata, to the Owners and their respective Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the holder of a mortgage on a Condominium Unit with respect to any such distribution; provided, however, that nothing in this Section 3 shall be construed to deny the Association the right to apply any or such proceeds to

repair or replace damaged portions of the Common Elements. The Association shall notify the appropriate holders of Mortgages whenever damage to the Unit exceeds \$5,000 or the damage to the Common Elements affecting any single Unit exceeds \$15,000.

Section 4. ASSOCIATION NOT LIABLE FOR DAMAGE. Notwithstanding the duty of the Association to maintain and repair the Common Elements, the Association shall not be liable for injury or damage caused by any condition of the Common Elements or by the conduct of another Owner or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

ARTICLE X

DAMAGE AND DESTRUCTION, OBSOLESCENCE, CONDEMNATION

Section 1. APPOINTMENT OF ATTORNEY-IN-FACT. Except as may otherwise be provided by law, each Owner by his acceptance of the deed or other conveyance vesting in him an interest in a Condominium Unit does irrevocably constitute and appoint the Association with full power of substitution as his true and lawful attorney in his name, place and stead (i) to deal with such interest upon damage to or destruction, obsolescence or condemnation of any real property as hereinafter provided, and (ii) to enter into agreements regarding the Common Elements including but not limited to leases, rights of way agreements and ingress and egress agreements with full power, right and authorization to execute, acknowledge and deliver any contract, deed, proof of loss, release or other instrument affecting the interest of such Owner, and to take any other action, which the Association may consider necessary or advisable to give effect to the provisions of this Declaration. If requested to do so by the Association, each Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any damage or condemnation claim shall be final and binding on all Owners. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in the case of fraud or gross negligence.

Section 2. DAMAGE AND DESTRUCTION. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements which are required to be insured by the Association, to substantially the same condition in which they existed prior to the damage with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. Nothing herein shall require the Association to repair or restore the interior finish of a Unit or the furniture, furnishings or other personal property of an owner. The proceeds of any insurance collected shall be available to the Association for the purpose of repair and reconstruction or replacement unless under the conditions set forth in subparagraph (b) below, the specified percentage of Owners and Mortgagees fail to approve repair, reconstruction or replacement.

(a) Except as provided in subparagraph (b), in the event of damage or destruction due to fire or other disaster, such damage or destruction shall be promptly repaired and reconstructed by the Association. If the proceeds of insurance are insufficient to effect such repair and reconstruction the Association shall levy a special assessment against all the Owners to pay any deficiency required to accomplish the repair and reconstruction. The amount of such deficiency assessment shall be a Common Expense and made pro rata, according to each Owner's Assessment Ratio, and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or reconstruction of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment.

(b) If destruction or damage is sustained to more than sixty per cent (60%) of the replacement value of the Condominium Units in one building, and if the Owners representing an

aggregate ownership interest of seventy-five per cent (75%) or more of the total number of Condominium Units in that Building and the Mortgagees of all Condominium Units in that Building determine not to rebuild the Improvement, the Condominium Units shall be sold by the Association, as attorney-in-fact for all of the Owners of Units in that Building, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and the By-Laws. The insurance settlement proceeds shall be divided by the Association according to each Unit Owner's interest in the Building (as such interests appear on the policy or policies), and such divided proceeds shall be paid into a separate account in the name of the Association, and shall be further identified by the designation of the Unit and the name of the Owner. There shall be added to each such account the apportioned amount of the proceeds derived from the sale of the Building. Such apportionment shall be based upon each Condominium Unit Owner's Assessment Ratio as modified to reflect the Owner's interest in the specific Building. 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 in the following order:

- (1) For payment of taxes and special assessment liens in favor of any assessing entity;
- (2) For payment of the balance of the lien of any Mortgagee of a Unit;
- (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.

Section 3. OBSOLESCENCE.

(a) If at any time subsequent to the expiration of twenty-five (25) years from the date of the first recording of this Condominium Declaration, Owners representing an aggregate ownership of seventy-five per cent (75%) or more of the Condominium Units agree that the Condominium Units are obsolete and that the same should be removed or reconstructed, and adopt a plan for reconstruction, which plan has the unanimous approval of all Mortgagees, then all of the Owners shall be bound by the terms and provisions of such plan. Any assessments made in connection with such plan shall be a Common Expense of the Owners of Condominium Units and made pro rata according to each Owner's undivided percentage interest in the Common Elements as reconstructed, which percentage interest shall be based upon the number of square feet of floor area in the reconstructed Unit as a percentage of the total square feet of floor area in all the Units.

(b) Any time subsequent to the expiration of twenty-five (25) years from the date of the recording of this Condominium Declaration, Owners representing an aggregate ownership interest of seventy-five per cent (75%) or more of the Condominium Units may agree that the Condominium Units are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every 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, all of the Condominium Units shall be sold by the Association, as attorney-in-fact for all the Owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's Assessment Ratio, and such apportioned proceeds shall be paid into separate accounts representing each Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the alphabetic designation of the 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 such accounts, without contribution from one account to

another, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (b)(5) of Section 2 of this Article X.

Section 4. CONDEMNATION. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply:

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

(b) In the event that an entire Building is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership thereof shall terminate. The Condemnation Award shall be apportioned only among the Owners of the Condominium Units in the Building in proportion to their respective undivided percentage interests in the Common Elements of the condemned Building.

(c) In the event that part but less than an entire Building is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Building and real property on which the Building is constructed shall be apportioned among Owners of Condominium Units in the Building in proportion to their respective undivided percentage interest in the Common Elements of the Building, (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

ARTICLE XI

MORTGAGEE'S RIGHTS

Section 1. NOTICES. Each Mortgagee upon written request by such holder to the Board, shall receive any of the following:

(i) Copies of budgets, notices of assessments, insurance certificates, or any other notices or statements provided under this Declaration by the Association to the Owner of the Condominium Unit covered by the deed of trust;

(ii) Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners;

(iii) Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;

(iv) Notice of the decision of the Owners or the Association to make any material amendment to this Declaration, the By-Laws or the Articles of Incorporation of the Association;

(v) Notice of substantial damage to or destruction of the Unit, or any part of the Common Elements;

(vi) Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Elements;

(vii) Notice of any default of the holder's Owner which is not cured by the Owner within thirty (30) days after the giving of notice by the Association to the Owner of the existence of the default;

(viii) The right to examine the books and records of the Association at any reasonable time.

Section 2. MORTGAGEE REQUESTS. The request of a Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a Mortgagee hereunder and in the event of multiple requests from purported Mortgagees on the same Condominium Unit, the Association shall honor the earliest request received.

Section 3. NO IMPAIRMENT OF LIEN. No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgagee taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Condominium Unit and listing the name or names of the Owner or Owners thereof and giving notice of such violation, breach or failure to comply. However, any purchaser or foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration.

Section 4. CONSENT OF MORTGAGEES REQUIRED. Except as provided herein for reallocation upon construction of additional buildings, unless at least seventy-five per cent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned), and the Owners of Condominium Units have given their prior written approval, the Association shall not:

(1) increase the pro rata interest or obligations of any Condominium Unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;

(2) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause;

(3) use hazard insurance proceeds for losses to any Unit, or to the Common Elements for any purpose other than the repair, replacement or reconstruction of the Common Elements except as is otherwise provided herein.