

STATE OF COLORADO, COUNTY OF EAGLE

RECORDED AT 2:42 P.M. BLOCK 282 Page 558

RECEPTION NO. 178965

March 5, 1979  
JOHNNETTE PHILLIPS, RECORDER  
70.4

DECLARATION OF CONDOMINIUM  
OF  
BENCHMARK CONDOMINIUMS

THIS DECLARATION made on the date hereinafter set forth by The Heritage Company, a Colorado Limited Partnership hereinafter referred to as "Declarant,"

W I T N E S S E T H

WHEREAS, Declarant is the owner of the following described property, situate in the County of Eagle, and State of Colorado, described as:

Lot 2, Block 2, Benchmark at Beaver Creek  
Subdivision, County of Eagle, State of Colorado,

and

WHEREAS, there presently exists on the Property an apartment complex which consists of (four) three story buildings with a total of ninety-two separately designated rental units; and

WHEREAS, Declarant desires to convert said complex into a condominium and to establish a condominium project under the Condominium Ownership Act of the State of Colorado, to-wit: Colo. Rev. Stat. Ann. 38-33-101, et. seq. (1973, as amended); and

WHEREAS, Declarant will convey interests in said property subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth,

NOW, THEREFORE, Declarant hereby declares that the property described above is hereby established as a condominium project under the Condominium Ownership Act of Colorado, and that it shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, uses and obligations, all of which are declared and agreed to be for the protection of the value of the property and for the benefit of persons acquiring interests therein, shall be deemed to run with the land, and shall be a benefit and a burden to any person acquiring an interest in said property, their grantees, successors, heirs, legal representatives and assigns.

ARTICLE I

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. PROPERTY

The real property subject to this Declaration is as described above. Declarant, as the Owner of fee simple title to the Property, expressly intends to and, by recording this Declaration, does hereby subject the Property to the provisions of this Declaration.

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Section 2. CONVEYANCES SUBJECT TO DECLARATION

All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in the property, and their respective heirs, successors, representatives or assigns.

Section 3. OWNERS' RIGHTS SUBJECT TO THE PROVISIONS OF THIS DECLARATION

Each Owner shall own his Unit in fee simple for use as a primary single family residence, and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

ARTICLE II

DEFINITIONS OF WORDS USED IN THIS DECLARATION

1. "Association" shall mean the Benchmark Condominiums Homeowners Association, a Colorado nonprofit corporation, its successors and assigns.

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

3. "Building" shall mean any structure housing one or more Units as shown on the Condominium Map. There are four such Buildings within the Property, each of which houses 23 Units.

4. "Condominium Map" shall mean the map filed for record by Declarant with the Clerk and Recorder of Eagle County, Colorado, depicting the Condominium Units as hereinafter described and any amendments or supplements thereto.

5. "Condominium Unit" or "Unit" shall mean an individual air space unit which is contained within the walls, basement or base floor, roof, windows and doors of such unit in the building as shown on the Condominium Map, including all fixtures and improvements contained therein, together with the interest in the General Common Elements appurtenant to such air space unit.

6. "Declarant" shall mean The Heritage Company, a Colorado Limited Partnership, its successors and assigns.

7. "Declaration" shall mean this document of Declaration of Condominium for Benchmark as may be amended from time to time.

8. "Deed of Trust" shall mean a first deed of trust, a first mortgage or any similar voluntary encumbrance of first priority.

9. "General Common Elements" shall mean any property or improvements existing for common use, and all other parts of the Properties necessary or convenient to its existence, maintenance and safety or normally in common use,

10. "Limited Common Elements" shall mean those General Common Elements designated in the Declaration or on the Condominium Map as reserved for use by fewer than all of the Owners.

11. "Manager" shall mean any duly authorized property manager employed or appointed by the Association to implement the duties and responsibilities incumbent upon the Association.

12. "Member" shall mean every person or entity holding membership in the Association.

13. "Owner" shall mean the fee simple title owner of record, whether one or more persons or entities, of any Condominium Unit, including sellers but excluding those having an interest only under an encumbrance.

14. "Property" shall mean that certain real property hereinabove described, together with improvements thereon and such additional property as hereinafter may be brought within the terms of and made subject to this Declaration, all of which constitute the project known as Benchmark Condominiums.

15. "Rules" shall mean the rules and regulations adopted by the Association as amended from time to time.

### ARTICLE III

#### CONVEYANCES -- DESCRIPTION OF CONDOMINIUM UNITS

##### Section 1. DIVISION INTO FEE SIMPLE ESTATES.

The property herein described and the improvements thereon are to be divided into ninety-two (92) fee simple estates. Each such estate shall consist of the separately designated Unit and an undivided one-ninety second (1/92) interest in and to the General Common Elements.

##### Section 2. CONDOMINIUM MAP.

Declarant shall file a Condominium Map of record. The Condominium Map shall depict at least the following: the legal description of the land and a survey thereof; the buildings and the location of the Units within the buildings, both horizontally and vertically; the perimeter boundary of each Unit and the location therein of any structural components or supporting elements of the buildings; the thickness of the common wall(s) between Units and the Unit numbers or other designation. The Condominium Map shall contain the dual certificate of a registered engineer certifying that the Condominium Map substantially depicts the layout, measurements and location of the buildings, the Units, the Unit designations, the dimensions of such Units, the elevations of the surfaces of floors and ceilings as constructed and that the Condominium Map was prepared subsequent to substantial completion of the improvements depicted. In

interpreting the Condominium Map, the existing physical boundaries of each Unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Condominium Map, from time to time, to conform the same to the actual physical location of the constructed improvements and to any changes thereof.

Section 3. DESCRIPTION OF UNIT.

Every contract for the sale of a Unit written prior to the filing for record of the Map and this Declaration may legally describe a Unit by its identifying Unit number designation followed by the words "Benchmark Condominiums," with further reference to the Map thereof to be filed for record and the Declaration to be recorded. Upon recordation of the Map and the Declaration in the records of the Clerk and Recorder of Eagle County, Colorado, such description shall be conclusively presumed to relate to the therein described Units.

Section 4. INTEGRATION OF INTEREST AND NONPARTITION.

Each Unit and the undivided interest in the General Common Elements, including parking spaces and carports, and all rights and burdens appurtenant thereto shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as an entire Condominium Unit. No Condominium Unit may be subdivided or partitioned. The General Common Elements shall be owned in common by all of the Owners and shall remain undivided. No Owner shall bring any action for partition or division of the General Common Elements. By the acceptance of a deed or other instrument of conveyance or assignment, each Owner specifically waives the right to institute or maintain a partition action or any other action designed to cause a division of the General Common Elements, and this Section may be pleaded as a full and absolute bar to the maintenance of such action.

Section 5. TAXATION.

Declarant shall give written notice to the Assessor of the County of Eagle, State of Colorado, of the creation of individual and undivided ownership of the Property as is provided by law so that each Unit shall be deemed a parcel for the purpose of separate assessment and taxation.

Section 6. LIENS AGAINST CONDOMINIUM UNITS.

Subsequent to the completion of any alterations, modifications or additions to the improvements described on the Map, if any, no lien shall arise or be effective against the Project. After such completion, liens or encumbrances shall only arise or be created against each Condominium Unit and the percentage of undivided interest in the General Common Elements appurtenant to the Condominium Unit, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel of real property subject to individual ownership.

## ARTICLE IV

### OWNERS PROPERTY RIGHTS

#### Section 1. LIMITED COMMON ELEMENTS.

An Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to the Owner's Unit, subject only to the rights granted to the Association herein. The following are hereby designated as Limited Common Elements:

- (a) The patios, sun decks, balconies, porches, and crawl spaces appurtenant to each Unit. No patios, balconies, or fireplaces currently exist appurtenant to the Units. The Board may submit to the Owners and holders of first Deeds of Trust a plan for constructing patios, balconies and/or fireplaces within or appurtenant to each Unit, which plan shall include the estimated costs of construction. If 75% of the Owners and 75% of the holders of first Deeds of Trust accept such plan in writing, the plan with all appropriate drawings and specifications related thereto shall be submitted to the Design Review Board of the Town or Avon or any successor or similar organization or board. Upon approval of the design by said Board, the Association shall proceed to construct such patios, balconies and/or fireplaces in accordance with said plan. Upon the required agreement of Owners and holders of first Deeds of Trust, the costs for construction of said patios, balconies and/or fireplaces, shall become a special assessment collectible against all Owners in the manner set forth in the Article herein concerning assessments. The 25% or less who do not wish to have patios, balconies and/or fireplaces constructed shall be liable for such special assessment to the same extent as those who agreed to said construction. Further, all Owners shall be responsible for any costs which exceed the estimated cost of constructing such patios, balconies and/or fireplaces to the same extent and in the same manner as they are for the special assessment as approved based on estimated costs;
- (b) The storage areas located in each Building, if any, which may be appurtenant to the Unit located in the same building bearing the same number designation on the Condominium Map; and
- (c) Parking spaces designated as appurtenant to Units. Two parking spaces will be appurtenant to each Unit as assigned by the Association.

Section 2.            RULES.

The Board, on behalf of the Association, may promulgate and enforce Rules governing the use, the maintenance, and the aesthetic appearance of the General Common Elements. Every Owner, guests, members of Owner's family, servants, employees, invitees, and licensees shall adhere strictly to the Rules.

Section 3.            USE OF GENERAL COMMON ELEMENTS.

Owners shall have the right to use and enjoy with others the General Common Elements.

Section 4.            DELEGATION OF USE.

Any Owner may delegate the Owner's right of enjoyment of the General Common Elements, and facilities to the resident members of the Owner's family or tenants or contract purchasers who may reside in the Unit.

Section 5.            LEASE OF CONDOMINIUM UNIT.

An Owner shall have the right to lease the Owner's Condominium Unit upon such terms and conditions as the Owner may deem advisable, subject to the following. Any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration and the Rules. Only an entire Condominium Unit may be leased, not any portions thereof, and no carport or parking space may be leased separately. Any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation of Bylaws of the Association, or the Rules shall be a default under the lease enforceable by the Association.

ARTICLE V

EASEMENTS

Section 1.            ACCESS.

Each Owner shall have a non-exclusive easement in, on and through the General Common Elements for access to said Owner's Unit and the Limited Common Elements appurtenant thereto.

Section 2.            BLANKET EASEMENTS.

There is hereby created a blanket easement upon, across, over and under all of the General Common Elements for ingress and egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the electrical and/or telephone company providing service to erect and maintain the necessary poles and other necessary equipment on the General Common Elements and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roof

and exterior walls of the buildings upon the General Common Elements. An easement is further 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 duties. Further, an easement is hereby granted to the Association to enter in, onto, above, across or under the General Common Elements and any Unit to perform the duties of maintenance and repair to any Unit or the General Common Elements. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said General Common Elements except as approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement, Declarant or the Association may grant such an easement to the General Common Elements by a separate recorded instrument without conflicting with the terms hereof and without consent of the Owners being required. The easements provided for in this Article shall in no way affect any other recorded easement to said General Common Elements.

Section 3. EASEMENTS FOR ENCROACHMENTS.

If any part of the General Common Elements encroach or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit unintentionally encroaches or shall hereafter (whether because of reconstruction, settling, shifting or otherwise) encroach upon any General Common Elements, or upon another Unit, the Owner of that encroaching Unit shall and does have a perpetual easement for such encroachment and for the maintenance of the same.

Section 4. EASEMENTS DEEMED APPURTENANT.

The easements and rights herein created for an Owner shall be appurtenant to the Unit of that Owner, and all conveyances and instruments affecting title to a Condominium Unit shall be deemed to grant and reserve the easements and rights as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights appears.

Section 5. RIGHT OF ENTRY.

The Association through its duly authorized agents shall have the right in case of any emergency originating in or threatening a Unit to enter therein immediately without request. An Owner shall permit entry into a Unit for the purpose of performing installations, alterations, or repairs to the mechanical, electrical, or utility services, which, if not performed, would affect the use of other Units, upon request for entry made in advance at a time convenient to the Owner.

ARTICLE VI  
RESTRICTIVE COVENANTS

Section 1.       USE.

The property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 2.       TEMPORARY USE BY DECLARANT.

Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain during the period of sale of said buildings and Condominium Units, upon such portion of the premises as such Declarant may choose, such facilities as in the sole opinion of said Declarant may be reasonably required, convenient or incidental to the sale of Condominium Units and interests, including, but without limitation, a business office, storage area, signs, model units and sales office.

Section 3.       PETS.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

Section 4.       SIGNS.

No advertising signs (except one "For Rent" or "For Sale" sign of not more than five square feet in one window of a Unit), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Condominium Unit or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the Property. Provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards, of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 5.       TRASH AND UNSIGHTLY USES.

All clotheslines, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Condominium Units and streets. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

Section 6.       USE OF EXTERIOR SPACE.

Except in the individual patio areas, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said premises, except

such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representative. The Owners of Condominium Units are hereby prohibited and restricted from using any land or air space outside the exterior building lines and patio enclosures, except as may be allowed by the Association's Board of Directors or as provided in this Declaration. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Condominium Units and is necessary for the protection of said Owners.

Section 7. CONSTRUCTION.

No exterior additions, or alterations to any Building nor changes walls and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of sale shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by 75% of the Owners, 75% of the first mortgagees and the Design review board of the town of Avon (or similar organization).

Section 8. ANTENNAS.

No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the premises, nor upon any structure situated upon said real property, other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 9. PROHIBITIONS.

An Owner shall do no act nor any work that will impair the structural soundness or integrity of a Building or impair any easement or hereditament.

Section 10. NO IMPERILING OF INSURANCE.

Nothing shall be done within the General Common Elements or Units which might result in an increase in the premiums of insurance obtained for any portion of the General Common Elements or Units which might cause cancellation of such insurance, except with the prior written consent of the Board.

Section 11. NO VIOLATION OF LAW.

Nothing shall be done within the General Common Elements or Units which would be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governmental body.

Section 12. NUISANCES.

No noxious or offensive activity shall be carried on upon the General Common Elements or Units, nor shall

anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No activity shall be conducted on any part of the General Common Elements which is or might be unsafe or hazardous to any person.

Section 13. MINERAL EXPLORATION.

No portion of the Property shall be used to explore for or to remove any water, soil, hydrocarbons, or other materials of any sort.

Section 14. MECHANICS' LIENS.

No labor performed or materials furnished with the consent or at the request of an Owner, the Owner's agent, contractor or subcontractor shall create any right to file a mechanic's lien against the Condominium Unit of any other Owner who does not consent to or request the same. Each contracting or consenting Owner shall indemnify, defend and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lienor against the Condominium Unit for labor performed or for materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from a contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto, including attorney's fees and expenses. Said expenses may be added to and become a part of Owner's regular assessments.

Section 15. PERSONAL BUSINESS.

No business activities of any kind whatsoever shall be conducted in any Building or in any portion of the General Common Elements. This restriction shall not be construed in such a manner as to prohibit an Owner or occupant from: (a) maintaining a personal or professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of this paragraph.

ARTICLE VII

BENCHMARK CONDOMINIUMS HOMEOWNERS ASSOCIATION

Section 1. DUTIES AND RESPONSIBILITIES OF THE BENCHMARK CONDOMINIUMS HOMEOWNERS ASSOCIATION.

Declarant has caused the Benchmark Condominiums Homeowners Association to be incorporated as a non-profit corporation and has designated such Association to be manager of the General Common Elements. Any purchaser of a Condominium Unit shall be deemed to have assented to, ratified and approved such designation and management. Said Association, by its signature approving this Declaration, has agreed to perform the duties required of it hereunder. Said Association shall have the following duties, rights and powers:

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

- (b) From funds collected, to provide for maintenance, construction, management, insurance, care of Association property and General Common Elements, and such other expenses as are enumerated in this Declaration.
- (c) To lease, acquire and sell real or personal property in pursuance of its obligations, except that the Association shall not sell or dispose of real property without the consent of at least 75% of the holders of first Deeds of Trust on the Units and 75% of the Owners.
- (d) To enter into and upon the Units when necessary with as little inconvenience as possible to the occupants concerned in connection with the duties outlined in this Declaration.
- (e) To enjoin or seek damages from or assess fines against the Owners for violation of the Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association or the Rules.
- (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 an apartment house or property manager in connection with the matters herein set forth, except that the Association may not encumber or dispose of the fee title of any Owner except to satisfy a lien, award or judgment imposed by for violation of the covenants imposed by this Declaration. The Association shall not enter into any contract or management agreement for the furnishing of services (other than utility or laundry services), material or supplies, the term of which is in excess of one year; and further provided that any contract or management agreement entered (excluding those for utilities and laundry services) by the Association shall be terminable by the Association for cause upon thirty (30) days written notice or without cause upon ninety (90) days written notice.
- (g) To protect and defend the General Common Elements from loss and damage by suit or otherwise.
- (h) To employ counsel, attorneys and auditors in connection with legal matters of the Association and in connection with the audit of books and records, which audit shall be available to Owners and holders of deed trust for inspection at the Association office, as hereinafter provided.
- (i) To file legal protests, formal or informal with authorities against the granting of authorities of zoning ordinances or variances concerning any property within a reasonable distance.

proximity of the Property which might affect the value of any Owner's interest in the General Common Elements.

- (j) To adopt Rules in accordance with the Bylaws for the regulation and operation of the General Common Elements including, but not limited to, regulations governing the use of the General Common Elements and Limited Common Elements.

#### ARTICLE VIII

##### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

###### Section 1. ASSOCIATION AS ATTORNEY-IN-FACT FOR OWNERS.

The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the General Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Project upon its destruction or obsolescence as hereinafter provided and to grant utility easements through any portion of the General Common Elements. The Acceptance by any Person of any interest in any Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, unless First Mortgagees of Units having at least a seventy-five percent (75%) interest in the General Common Elements and Owners of at least 75% of the Units have given their prior written approval, the Association shall not be empowered or entitled to:

(i) by act or omission, seek to abandon or terminate the condominium Project;

(ii) partition or subdivide any Condominium Unit.

(iii) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the General or Limited Common Elements; or consider further subdivision of General Common Elements for additional development;

(iv) Use hazard insurance proceeds for loss to the improvements for other than repair, replacement or reconstruction of such improvements.

#### ARTICLE IX

##### MEMBERSHIP AND VOTING RIGHTS

###### Section 1. MEMBERSHIP.

The following shall be entitled to membership in the Association:

- A. All Owners shall automatically become Members of the Homeowners Association. No Owner shall have more than one membership and 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.

- B. The General Partner of Declarant or its successors or assigns, or the designees of the General Partner, shall be Members. Such membership shall terminate when the right of the General Partner of Declarant to vote shall no longer be in effect.

## Section 2. VOTING RIGHTS.

The Association shall have two classes of voting membership.

CLASS A. All Owners shall be "Class A Members." Class A Members shall be entitled to one vote for each Condominium Unit in which they hold the interests required for membership. When more than one person holds such interest, the vote for such Condominium Unit shall be exercised by one of them designated by written instrument to be the sole voting Member, but in no event shall more than one vote be cast with respect to any such Condominium Unit. In the absence of such designation, the Board may designate such a sole voting Member.

CLASS B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three votes for each Condominium Unit in which it holds the interest required for membership, provided that the Class B membership shall cease and become converted to Class A membership on the happening of either of the following events, which ever occurs earlier:

- A. When the total votes, based upon all Condominium Units owned outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- B. December 1, 1983.

## ARTICLE X

### INDEMNIFICATION

Any Manager, employee of the Association, and each director and officer of the Association, shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having acted as such on behalf of the Association; provided that this indemnification shall not apply if the said person is adjudged guilty of willful misfeasance or malfeasance in the performance of said person's duties; provided further than in the event of a

settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

## ARTICLE XI

### ASSESSMENTS

#### Section 1. ASSESSMENTS.

Each Owner, by acceptance of a deed, agrees to pay the Association assessments or charges to be fixed, 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 property against which each assessment is made in the event of delinquency in payment as allowed in this Article XI, Section 4. 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 of the persons jointly and severally who were the Owners at the time when the assessment was made. The grantee of a Unit, except a first Mortgagee who acquires a Unit by foreclosure or a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the assessments up to the time of the grant or conveyance. Payment of the assessments made shall be paid by the Owners to the Association as of the date of closing the original purchase of an Owner's Condominium Unit and prorated if upon a date other than the due date of an assessment, and thereafter in monthly or other periodic installments commencing on the first day of each month or period following the closing.

#### Section 2. PURPOSE OF ASSESSMENT.

The assessments levied by the Association shall be used for the acquisition, construction, management, maintenance and care of the General Common Elements, and for the performance of all other duties and obligations incurred by the Association pursuant to this Declaration.

#### Section 3. BASIS OF ASSESSMENTS.

- (a) Initial Amount. Every Condominium Unit, Except those owned by Declarant, shall be subject to an initial maximum monthly assessment of ninety eight dollars and 98/100--  
(\$98.98)----- The Board, on behalf of the Association, shall fix the monthly assessment within the maximum monthly assessment and may raise or lower said monthly assessment amount within the maximum monthly assessment as it deems necessary in its discretion. In addition, the Board shall have the power in its sole discretion to increase the maximum monthly assessment by five percent (5%) per year at any time. Any increase in the maximum monthly assessment of more than five percent (5%) per calendar year

shall require the affirmative vote of two-thirds (2/3) of the votes of each class of Members voting in person or by proxy at a meeting duly called for such purpose, written notice of which must be sent to all Members at least thirty (30) days in advance.

Notwithstanding the above, upon affirmative vote of two-thirds (2/3) of the board, the Board may authorize and expend funds in the event of an emergency concerning property under the jurisdiction of the Association. The expenditure thereafter shall become an assessment collectible by the Association from its Members without further approval of the membership being required.

- (b) Individual Assessments. The Board shall have the right to add to any Owner's assessment as provided in this Article those amounts expended by the Association for the benefit of any Unit and the Owner thereof, including, but not limited to, fines; repairs and replacements caused by the negligent or willful acts of any Owner, his family, guests, employees, licensees, lessees or invitees; maintenance, repair, care of and replacement of General Common Elements and Limited Common Elements appurtenant to a Unit; and all other expenditures or charges provided for by this Declaration or the Bylaws.
- (c) Special Assessments. In addition to the assessments authorized above, the Board on behalf of the Association may levy special assessments for the purpose of defraying the cost of any construction or reconstruction, unexpected structural repairs or replacement or capital improvements, including the necessary fixtures and personal property related thereto. If any such assessment exceeds \$5,000.00, the same must have assent of two-thirds (2/3) of the Owners voting in person or by proxy at a meeting duly called for such purpose or at the annual meeting. Written notice shall be sent to all Owners of record not less than thirty (30) days nor more than sixty (60) days prior to the meeting.
- (d) Change in Monthly Assessment With Maximum Allowed. The Board shall fix the amount of the monthly assessment or any change in the monthly assessment (within the then maximum allowed) at least thirty (30) days in advance of the levy of such assessment and shall send to every Owner.
- (e) Declarant. Monthly and special assessments are to be assessed equally for all Condominium Units not owned by Declarant. Declarant shall not be required to pay any assessment.

- (f) Assessment Reserves. The Association shall require an Owner, other than Declarant, to deposit with the Association up to an amount equal to three times the amount of the estimated monthly common assessment, which sum shall be held, without interest, by the Association or Managing Agent as a reserve to be used for paying such Owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment of the monthly common assessment as the same comes due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his assignee or sublessee for any unused portion thereof.
- (g) At the time of the recording of this Declaration each Building contains meters concerning gas, water, electricity etc. Such meters pertain the entire Building, and no meters relating each individual Unit exist. All charges utilities based on such meters shall be pro-rated among the Owners equally and assessed as assessments. If, at any time in the future, at a meeting duly called for such purpose, the Owners, by majority vote of all Owners, decide to have individual meters placed in each Unit, such individual meters will be installed, and after such installation, charges for services based on such meters shall be the individual obligation of each Owner and shall no longer be collected by the Association as assessments.

Section 4.

NON-PAYMENT OF ASSESSMENTS.

- (a) Assessments and fees shall be due and payable on the first day of each month or the first day of the period fixed for payment of the assessment or fees, and shall become delinquent unless paid ten (10) days thereafter. All unpaid assessments and fees shall be subject to a late charge for non-payment as may be determined from time to time by the Board. If such fees or assessments are not paid within thirty (30) days after the due date, they shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum or other reasonable rate fixed by the Board and uniformly applied. Failure to make payment within thirty (30) days of the due date thereof also shall cause the full amount of such Owner's estimated annual assessment for the remainder of that year to become due and owing at once, at the option of the Board. In the event it shall become necessary for the Board to collect any delinquent assessments or fees, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay in addition to the assessment and late charge and interest

herein provided, all costs of collection, including a reasonable attorney's fee and costs incurred by the Board in enforcing payment.

- (b) The Association is hereby granted a lien against the Owner's Condominium Unit for any payment which the Owner fails to make as required by this Declaration provided, however, that (1) such lien shall be effective only upon recordation of a notice thereof in the office of the Clerk and Recorder of Eagle County, State, of Colorado, and each Owner, by accepting a deed to a Condominium Unit, designates any one of the officers of the Association or its duly appointed Manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; (2) a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Colorado for foreclosure of mortgages on real property; and (3) such lien shall be subject and subordinate to and shall not affect the right of a holder of any recorded first deed of trust now or hereafter placed on the Condominium Unit in good faith and for value. The lien hereby given also shall be a lien upon all of the rents and profits of the encumbered Condominium Unit. In the event of a foreclosure of the assessment lien, the Owner shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure action, the Owner's Condominium Unit is left vacant, the Board may take possession and rent said Condominium Unit or apply for the appointment of a receiver for the Condominium Unit without notice to the Owner. In addition to the lien herein granted, the Board on behalf of the Association shall have the right to sue any Owner who fails to pay any amounts assessed against the Condominium Unit and obtain judgment for the amount of assessments due plus costs as herein provided. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.
- (c) In the event an Owner is in default on any obligation secured by an encumbrance on the Owner's Condominium Unit, the Board, at its option on behalf of the Association, may pay the amount due on said obligation and file a lien against the Condominium Unit in the manner as provided for herein for unpaid assessments or charges.
- (d) Sale or transfer of any interest by an Owner shall not affect or release any lien granted

the Association herein, except as provided, and shall not affect the personal obligation of the Owner. No Owner shall be relieved from payment of any assessment or charge by waiver or suspension of the use of any of the General Common Elements or by the abandonment or leaving of a Condominium Unit.

- (e) In the case of the conveyance of a Condominium Unit pursuant to foreclosure proceedings or by deed in lieu of foreclosure, such transfer of title shall extinguish the lien for all unpaid assessments made by the Association becoming due before the date of transfer of title or date of first possession, whichever comes first. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a general expense collectible from all the Owners as such, without prejudice to the right of the Association to recover such amount from the delinquent Owner.

Notwithstanding any provision herein to the contrary any holder of a first Deed of Trust who obtains title to a Unit pursuant to the remedies provided in the Deed of Trust on foreclosure of the Deed of Trust, or by deed in lieu of foreclosure shall not be liable for such Units unpaid assessments which accrue prior to acquisition of title to such Unit by said holder.

- (f) The Association shall maintain, through regular monthly assessments, a reserve fund in the amount of \$5,000 for purposes of maintenance, repair and replacement of General Common Elements which must be replaced on a periodic basis.

## ARTICLE XII

### MAINTENANCE

#### Section 1. MAINTENANCE OF THE GENERAL COMMON ELEMENTS.

The Association shall provide for the care, operation, management and repair of the General Common Elements, except as otherwise provided herein. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the General Common Elements in good, clean, attractive and sanitary order and repair; may arrange for water, sewer, electric, gas and all other necessary utility services to be furnished to the General Common Elements and each of the Units; may maintain and replace all or any portion of the landscaping; may provide for rubbish collection; may clean chimneys; may remove snow, ice and other materials from the Private Streets, driveways and walkways; shall keep the General Common Elements safe, attractive and desirable; and may make necessary or desirable alterations or improvements to the General Common Elements. Nothing herein shall be construed as a waiver of any right by the Association to

recover for any damage or expense incurred as the result of the willful or negligent action or omission of any person.

Section 2. OWNER MAINTENANCE.

Each Owner shall provide for all maintenance, repair and replacement of the Owner's Unit, including, but not limited to, maintenance, repair and replacement of the air conditioning, refrigerators, ranges and other kitchen appliances, lighting fixtures and other electrical appliances which are within and appurtenant to a Unit; replacement of all broken windows of the Unit; all of the decorating within the Owner's Unit, including painting, wall papering, washing, cleaning, paneling, floor covering, interior window surfaces, draperies, window shades, curtains, lamps and other furnishings, and all other interior decorating; maintenance and repair of all utilities, fixtures and equipment installed within a Unit, commencing at the point where utility lines, pipes, wires, conduits, or systems enter the exterior walls of the Unit; maintenance, repair and cleaning of the fireplace within the Owner's Unit. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors, and ceilings which constitute the exterior boundaries of the Owner's Unit, and each Owner shall maintain such interior surfaces in good condition. The use and covering of the interior surfaces of windows by any item visible from the exterior of the Unit shall be subject to the Rules of the Association. Each Owner shall maintain, repair and keep up in a neat and clean condition his patio or balcony, if any.

No Owner shall do any act or work or allow any condition to exist which shall adversely affect the other Units or their Owners.

An Owner shall do no act nor any work that will or may impair the structural soundness or integrity of the Building or impair any easement or hereditament without the written consent of the Board, after first proving to the satisfaction of the Board that such work or act will not impair structural soundness and that such work or act shall be done or performed in a workmanlike manner. Any expense to the Board for investigation, including but not limited to the engaging of a structural engineer, may be charged to the Owner seeking the consent. The decision of the Board shall not be subject to review and shall be subject only to their absolute discretion.

In the event an Owner fails to maintain his Unit and appurtenant Limited Common Elements in accordance herewith or if an Owner does any act or work which adversely affects any other Unit or the General Common Elements, the Association shall have the right to remedy same and said Owner shall be responsible for and shall reimburse the Association for any expenses incurred by the Association in effecting such a remedy. Any reimbursement required hereunder shall be in the nature of an assessment, and all rights which the Association has with respect to collection of assessments as herein provided in Article XI, Section 4 shall be available to the Association.

### Section 3. ASSOCIATION MAINTENANCE.

Except as otherwise provided in this Article, the Association shall provide for the maintenance, repair and replacement of the Buildings, including, but not limited to, the following:

- (a) Maintenance, repair and replacement of water, sewer, electrical and other systems which serve more than one Unit, but not including those portions of such systems which are within a Unit.
- (b) Maintenance, repair and replacement of roofs, steps, chimneys, outer surfaces of exterior walls, passageways, and fences.
- (c) Painting, repainting and resurfacing of Building exteriors.
- (d) Decorating of the General Common Elements, other than interior surfaces within the Units, and any redecorating of the interior of Units to the extent made necessary by any damage thereto caused by maintenance, repair or replacement work by the Association to the General Common Elements.

### ARTICLE XIII

#### INSURANCE

The Board of Directors shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates, established by the Colorado Insurance Commissioner, and written with companies licensed to do business in Colorado covering the risks set forth below. The Board of Directors shall not obtain any policy where:

- (i) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagee or mortgagee's designee, or (ii) 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 (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds. The types of coverages to be obtained and risks to be covered are as follows, to-wit:

- (a) Fire insurance with extended coverage and all risk endorsements, which endorsements shall include endorsements for vandalism, malicious mischief, boiler explosion and machinery location. Said casualty insurance shall insure the entire Property, the nature of which is a Common Element (including all of the Condominium Units, fixtures therein initially installed or conveyed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by Unit Owners) together with

all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each first Mortgagee of a Unit, which shall provide that the loss, if any, thereunder, shall be payable to Benchmark Condominiums Homeowners Association for the use and benefit of mortgagees as their interest may appear.

- (b) If the Property 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 Property 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 Property.
- (c) Public liability and property damage insurance in such limits as the Board may from time to time determine, but not in an amount less than \$500,000.00 per injury, per person, per occurrence, covering all 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 Property. Said policy shall also contain a "severability of interest endorsement."
- (d) Workmen'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.
- (e) The Association shall purchase, in an amount not less than one hundred percent (100%) of the Association's estimated annual operating expenses and reserves, 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.
- (f) The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Property, including plate or other glass insurance and any personal property of the Association located thereon.

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 an 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 first Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments or premiums, shall be delivered to all first 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 Unit Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Unit number designation) and first Mortgagee.

Prior to obtaining any policy of fire insurance or renewal thereof, the Board or Managing Agent shall obtain an estimate of value from a duly qualified real estate or insurance agent, which agent shall reasonably estimate the full replacement value of the entire Property, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than eighty percent (80%) of the full replacement cost. Determination of maximum replacement value shall be made annually by one or more written estimates to be furnished by a person knowledgeable of replacement cost, and each first Mortgagee shall be furnished with a copy thereof, within thirty (30) days after receipt of such written estimates. Such amounts of insurance shall be adjusted annually in accordance with their currently determined replacement value.

Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

Insurance coverage on furnishings and other items of personal property belonging to an Owner, and public liability coverage within each Condominium 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.

In the event that there shall be any damage or destruction to, or loss to a Condominium Unit which exceeds \$1,000.00 or any damage or destruction to, or loss to the General Common Elements which exceeds \$10,000.00, then notice of such damage or loss shall be given by the Association to each first Mortgagee of said Unit within ten (10) days after the occurrence of such event.

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 non-compliance of any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise

invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

#### ARTICLE XIV

##### ASSOCIATION AS ATTORNEY-IN FACT -- DAMAGE AND DESTRUCTION

This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property upon its destruction, repair or obsolescence.

Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place and stead for the purpose of dealing with the Property upon its destruction, repair or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used herein means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each Condominium Unit and the General Common Elements and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. Except as is otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the Owners and all first Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

- (a) In the event of damage or destruction to the Property to the extent of not more than sixty-six and two-thirds percent of the total replacement cost thereof, not including land, 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 improvements 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).
- (b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent of

the total replacement cost of the Property, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Units. Such deficiency assessment shall be an assessment and made pro rata according to each Owner's percentage interest in the General Common Elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such 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 hereinbefore. 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, and the Association 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. 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:

- (i) for payment of the balance of the lien of any first Mortgage;
  - (ii) for payment of taxes and special assessment liens in favor of any assessing entity;
  - (iii) for payment of unpaid Assessments;
  - (iv) for payment of junior Mortgages and encumbrances in the order of and to the extent of their priority; and,
  - (v) the balance remaining, if any shall be paid to the Unit Owner.
- (c) If the Property is damaged or destroyed to the extent of more than sixty-six and two-thirds percent of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent, or more, of the General Common Elements, do not voluntarily,

within one hundred days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first Mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining Property shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the Articles and Bylaws. 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 (as such interests appear on the policy or policies), 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. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Property. Such apportionment shall be based upon each Owner's percentage interest in the General Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(i) through (v) of this paragraph. The provisions contained in this subparagraph shall not hinder the protection given to a first Mortgagee under a mortgagee endorsement.

- (d) If the Property is destroyed or damaged to the extent of more than sixty-six and two-thirds percent of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent, or more, of the General Common Elements adopt a plan for reconstruction, which plan has the unanimous approval of all first Mortgagees, then all of the Owners shall be bound by the terms and other provisions of such plan. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance for such destruction or damages, as well as the proceeds of an assessment to be made against all of the Owners and their Units. Any assessment made in connection with such plan shall be a Common Expense and made pro-rata according to each Owner's percentage

interest in the General Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided hereinabove. 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 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 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 subparagraphs (b)(i) through (v) of this paragraph.

- (e) The Owners representing an aggregate ownership interest of eighty five percent, or more, of the General Common Elements may agree that the Units are obsolete and adopt a plan for the renewal and reconstruction, which plan shall have the unanimous approval of all first Mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, then the expenses thereof shall be payable by all of the Owners as assessments; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen days after the adoption of such plan that such Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have fifteen days within which to cancel such plan. If such plan is not cancelled then the Unit shall be purchased by the Association according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notified the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned in this subparagraph shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and

give notice of such nomination to the other party) an independent appraiser. If either party fails to make such a nomination, the appraiser nominated shall within five days after default by the other party appoint and associate with him another independent appraiser. If the two appraisers designated by the parties, or selected pursuant thereto in the event of the default of one party, are unable to agree, they shall appoint another independent appraiser to be umpire between them, if they can agree on such Person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two independent appraisers and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Colorado and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraphs (b)(i) through (v) of this paragraph.

- (f) The Owners representing an aggregate ownership interest of eighty-five percent, or more, of the General Common Elements may agree that the Units are obsolete and that the same should be sold. Such plan (agreement) must have the unanimous written approval of every first Mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire 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, the Map, the Articles and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one 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 subparagraphs (b)(i) through (v) of this paragraph.

- (g) An assessment (whether denominated as such or as a Common Expense) in this Article may, at the option of the Board be collected in the manner provided in Article XI, Section 4.

## ARTICLE XV

### CONDEMNATION

#### Section 1. CONSEQUENCES OF CONDEMNATION.

If at any time or times during the continuance of 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 advance thereof, the provisions of this Article XV shall apply.

#### Section 2. PROCEEDS.

All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association. Any proceeds hereunder shall be distributed in the order set forth in Article XIV, paragraph (b)(i-v).

#### Section 3. COMPLETE TAKING.

In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interests in the General Common Elements, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Each share shall be paid to or on behalf of the Owner as may be directed in writing by the first mortgagee with respect to the Unit or, if none, by the Owner.

#### Section 4. PARTIAL TAKING.

In the event that less than the entire Project 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: (i) 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 to taking of or injury to the General Common Elements and shall be apportioned among Owners in proportion to their respective undivided interests in the General 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 injury to a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Unit involved, and (iv) the 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.

#### Section 5. REORGANIZATION.

In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof automatically shall cease to be a member of the Association, and such owner's interest in the General Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the ownership voting rights and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration by the recording of a written instrument or instruments specifying the amendment or addition, executed by the Owners, as shown by the records in the office of the Clerk and Recorder of Eagle County, Colorado, of Units representing an aggregate ownership interest of two-thirds, or more, of the General Common Elements and not less than 75% of the first Mortgagees.

#### ARTICLE XVI

##### PARTY WALLS

The rights and duties of the Owners of Condominium Units within this Condominium project with respect to party walls shall be governed by the following:

- (a) Each wall, including patio walls, which is constructed as a part of the original construction of the Building, any part of which is placed on the dividing line between separate residence units, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

- (b) In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests or agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining Owner.
- (c) In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.
- (d) In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Condominium Unit in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining Owner.
- (f) These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an Owner.

## ARTICLE XVII

### MORTGAGEE'S RIGHTS

#### Section 1. NOTICE TO MORTGAGEE.

Each holder of a deed of trust on any Condominium Unit upon written request by such holder to the Board, shall receive any of the following:

- (a) 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;
- (b) 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;

- (c) Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;
- (d) Notice of the decision of the Owners or the Association to make any material amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association;
- (e) Notice of substantial damage to or destruction of any Unit, or any part of the General Common Elements;
- (f) Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the General Common Elements;
- (g) 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;
- (h) The right to examine the books and records of the Association at any reasonable time.

## Section 2. FORM OF REQUEST.

The request of a holder of a first deed of trust 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 holder of a deed of trust 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 holder of a Deed of Trust hereunder.

## Section 3. PROTECTION.

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 holder of a Deed of Trust 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 at foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration.

## ARTICLE XVIII

### COMPULSORY ARBITRATION

All controversies, claims and matters of difference, including all questions as to whether the right to arbitrate any question exists, excepting those matters for

which this Declaration specifically provides another method of settlement or enforcement, arising between or among the Owners, the Association, the Board, the Manager and any agent or committee of the Association or Board, shall be settled by arbitration according to the rules and practices of the American Arbitration Association from time to time in force, except that if such rules and practices shall conflict with the Colorado Rules of Civil Procedure or any other provision of Colorado law then in force, such Colorado rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. Arbitration may proceed in the absence of either party if notice of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such proceedings. Such awards shall be final and binding on all parties to the extent and in the manner provided by applicable statute and the Colorado Rules of Civil Procedure, and the costs of arbitration including reasonable attorney's fees shall be borne by the losing party thereto unless the arbitrators specify otherwise. All awards of the arbitrators may be filed with the Clerk of the District Court of Eagle County, State of Colorado, as a basis of declaratory or other judgment and for the issuance of execution, and, at the election of the party making such filing, with the clerk of one or more other courts, state or federal, having jurisdiction over the party against whom such an award is rendered or its property. No party shall be considered in default hereunder during the pendency of arbitration proceedings relating to such default.

#### ARTICLE XIX

##### DURATION AND AMENDMENTS

###### Section 1. AMENDMENTS.

This Declaration shall remain in full force and effect for as long as the Properties remain as a condominium development. Except as hereinafter provided, the Declaration neither may be amended, or revoked, nor may any General Common Elements used or held for the benefit of all the Condominium Units on the Properties be abandoned, partitioned, subdivided, sold, encumbered or transferred except by a vote of Owners representing not less than seventy-five percent (75%) of all Owners' interests in the Condominium Units. Whenever an Owner's interest is subject to a Deed of Trust, the Owner's vote shall be included in said required percentage only upon concurrence of the holder of the Deed of Trust. Such amendments shall be effective only upon the recordation of the certificate setting forth the amendment signed by the Owners and the holders of Deeds of Trust representing not less than seventy-five (75%) of all the interests in the Condominium Units. No amendments to this Declaration shall be in conflict with the laws of the State of Colorado. No amendments shall affect the rights of Declarant herein unless approved and consented to by Declarant in writing.

###### Section 2. SPECIAL AMENDMENT.

Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration

at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make purchase, sell, insure, or guarantee deeds of Trust covering Condominium Units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed mortgage, Trust Deed, or other evidence of obligation or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be grant and acknowledgment of, and a consent to the reservation of, the power to Declarant to make, execute and record Special Amendments. No special trust upon a Condominium Unit or any warranties made by an Owner or holders of a deed of trust in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the deed of trust on such Owner's Condominium Unit.

## ARTICLE XX

### CONTRIBUTIONS BY DECLARANT

#### Section 1. IMPROVEMENT OF GENERAL COMMON ELEMENTS.

Declarant shall deposit, on or before May 15, 1979, the sum of \$50,000.00 with the Association to be used for the maintenance and improvement of General Common Elements in such manner as the Board deems desirable.

#### Section 2. BUILDING EXTERIORS.

Declarant shall provide the Association with sufficient funds to be used for the resurfacing and repainting of Building exteriors. Such contribution of funds shall be on a one time basis and shall be made on or before May 15, 1979. In addition, Declarant, at its option may order separate metering of the Units prior to January 1, 1980. Such work shall be done at Declarant's expense.

## ARTICLE XXI

### GENERAL PROVISIONS

#### Section 1. ENFORCEMENT.

The failure of any Owner to comply with the provisions of the Declaration, Bylaws and any Articles of Incorporation of the Association will give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages or injunctive relief, or both. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained in no event shall be deemed a waiver of the right to do so thereafter.

Section 2.            INVALIDITY.

Any provision of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 3.            CLAIMS.

No claim or cause of action shall accrue in favor of any person in the event of the invalidity of any provision of this Declaration or for failure of the Association or Declarant to enforce any provision hereof. This Section may be pleaded as a full bar to the maintenance of any suit action, or arbitration brought in violation of this provision.

Section 4.            CAPTIONS.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Section 5.            GENDER.

The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender, and the use of the singular shall be deemed to refer to the plural, and vice versa, when the context so requires.

Section 6.            NOTICES.

Any notice required to be sent to any Member or Owner pursuant to the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 7.            VOTING AND SIGNATURES.

Wherever in this Declaration a vote or signature of Owners or Members is required, each Condominium shall have one vote or signature as the case may be.

This section shall not, however, affect Declarant's rights with respect to its Class B voting membership.

THE HERITAGE COMPANY,  
a Colorado Limited Partnership

By Richard H. Rossmiller  
Richard H. Rossmiller, Sole General  
Partner

STATE OF COLORADO

COUNTY OF Adams

) ss.

The foregoing Declaration of Condominium for  
Benchmark was acknowledged before me this 28th day of  
December, 1978, by Richard H. Rossmiller, sole  
general partner of the Heritage Company, a Colorado Limited  
Partnership.

Witness my hand and official seal.  
My Commission expires: 1/27/80

Christine Lager  
Notary Public

APPROVED:

BENCHMARK CONDOMINIUMS HOMEOWNERS  
ASSOCIATION

By James P. Foster President

WITNESS:

Christine Lager  
Secretary

APPROVED:

TOWN OF AVON

By Angelo V. Alpi Mayor

By Leslie Allen Clerk



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- (b) From funds collected, to provide for maintenance, construction, management, insurance, care of Association property and General Common Elements, and such other expenses as are enumerated in this Declaration.
- (c) To lease, acquire and sell real or personal property in pursuance of its obligations, except that the Association shall not sell or dispose of real property without the consent of at least 75% of the holders of first Deeds of Trust on the Units and 75% of the Owners.
- (d) To enter into and upon the Units when necessary with as little inconvenience as possible to the occupants concerned in connection with the duties outlined in this Declaration.
- (e) To enjoin or seek damages from or assess fines against the Owners for violation of the Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, or the Rules.
- (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 an apartment house or property manager in connection with the matters herein set forth, except that the Association may not encumber or dispose of the fee title of any Owner except to satisfy a lien, award or judgment against such Owner for violation of the covenants imposed by this Declaration. The Association shall not enter into any contract or management agreement for the furnishing of services (other than utility or laundry services), material or supplies, the term of which is in excess of one year; and further provided that any contract or management agreement entered into (excluding those for utilities and laundry services) by the Association shall be terminable by the Association for cause upon thirty (30) days written notice or without cause upon ninety (90) days written notice.
- (g) To protect and defend the General Common Elements from loss and damage by suit or otherwise.
- (h) To employ counsel, attorneys and auditors in connection with legal matters of the Association and in connection with the 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 file legal protests, formal or informal, with authorities against the granting by authorities of zoning ordinances or variances concerning any property within a reasonable