

AMENDED

DECLARATION FOR BEAVER BENCH CONDOMINIUMS INC.

THIS "AMENDED DECLARATION" AMENDS AND MODIFIES AND TOTALLY SUPERSEDES THAT DECLARATION PREVIOUSLY RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF EAGLE COUNTY, COLORADO ON THE 15th DAY OF FEBRUARY, 1977, IN BOOK 252 AT PAGE 632, RECEPTION NUMBER 148923.

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the undersigned, hereinafter called "Declarant", is the owner of the real property described on the attached Exhibit "A", which by this reference is made a part hereof; and

WHEREAS, Declarant desires to establish a leasehold condominium project under the Condominium Ownership Act, as amended, of the State of Colorado; and

WHEREAS, Declarant does hereby establish a plan for the ownership of the condominium real property estates, hereinafter described, subject to easements, restrictions, reservations, conditions, taxes and assessments, if any, on the real property described in the attached Exhibit "A"; consisting of the area or space contained in each of the air space units located within the improvements and the co-ownership by the individual and separate owners thereof of an undivided interest in all of the remaining property, which property is hereinafter defined and referred to as general common elements;

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

1. Definitions, unless the context shall expressly provide otherwise.

(a) "Unit" means an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors and built-in fireplaces, if any, along the perimeter boundaries of the air space as said boundaries are shown on the Condominium Map, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or full use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, pipes, vents, flues, conduits, wires and other utility installations, except the outlets thereof when located within the Unit, and balconies and patios. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

(b) "Condominium Unit" means the area or space contained in each of the air space units, together with an undivided interest in the general common elements and the appurtenant limited common elements thereto.

(c) "Owner" means any person or entity, including Declarant, at any time owning a Condominium Unit. The term "Owner" shall not refer to any Mortgagee unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

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(d) "General Common Elements" means and includes the real property allocated to the condominium units as provided hereinafter and the improvements thereon except the units; the structural components of the improvements thereon, such improvements thereon as may be provided for common use; service streets; green areas; provided, however, that each unit owner whose unit has sole access to a patio or balcony, if any, shall have an easement for the exclusive use thereof. All other parts of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air above such land, shall be owned, as tenants in common, by all of the owners of the separate units, each owner of a unit having an undivided interest in such general common elements as is provided hereinafter.

(e) "Declaration" means this Declaration, Amendments and Supplements thereto, if any.

(f) "Limited Common Elements" means those parts of the general common elements which are either limited to and reserved for the exclusive use of an owner of a condominium unit or are limited to and reserved for the common use of more than one but fewer than all of the condominium unit owners.

(g) "Condominium Project" or "Project" means all of the land and improvements submitted by this Declaration.

(h) "Common Expenses" means and includes (i) expenses of administration, operation and management, repair or replacement of the common elements; (ii) expenses declared common expenses by the provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association; (iii) all sums lawfully assessed against the general common elements by the Board of Directors of the Association; (iv) expenses agreed upon as common expenses by the Association of unit owners; and (v) expenses as are provided in any Management Agreement.

(i) "Association of Unit Owners" or "Association" means the Beaver Bench Condominium Owners Association, a Colorado not for profit corporation, the Articles of Incorporation and By-Laws of which shall govern the administration of this condominium property and the members of which association shall be all of the owners of the condominium units.

(j) "Map" or "Condominium Map" or "Supplement Map" means and includes the engineering survey of the land depicting and locating thereon the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the land and improvements thereon recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

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

(l) "Mortgagee" means any person named as the mortgagee or beneficiary under any mortgage under which the interest of any owner is encumbered, or any successor to the interest of such person under such mortgage.

## 2. Division of Property into Condominium Units.

The real property described in Exhibit "A" and the improvements thereon are hereby divided into the estates as is set forth on the attached Exhibit "B" which by this reference is made a part hereof. Each estate shall consist of the separately designated unit and the undivided interest in and to the general and limited common elements appurtenant thereto as set forth herein.

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### 3. Filing of the Condominium Map.

The Map may be filed for record in whole or in parts, sections or supplements, as construction of the units and other improvements are substantially completed. The Map (or any part or section thereof) depicting units shall not be filed for record until the building in which the units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically. Each such Map shall be filed for record prior to the conveyance of the condominium units shown thereon. Each such Map shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the building(s); the floor and elevation plans; the location of the unit within the building, both horizontally and vertically; the thickness of the common walls between or separating the units; the location of any structural components or supporting elements of a building located within a unit; and, the unit designations and the building symbol. Each such Map shall contain the certificate of a registered land surveyor or professional engineer or licensed architect certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the units, the unit designations, building symbols, the elevations of the unfinished floors and that such Map was prepared subsequent to substantial completion of the improvements. In interpreting the Map, the existing physical boundaries of each separate unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Map, from time to time, to conform the same according to the actual location of any of the constructed improvements and to establish, vacate and relocate easements, access road easements and on-site parking areas.

### 5. The Limited Common Elements.

A portion of the general common elements is reserved for the exclusive use of the individual owners of the respective units, and such areas are referred to as "limited common elements". The limited common elements so reserved shall be identified on the Map; provided, however, that any patio or balcony which is accessible from, associated with and which adjoins a unit and any other limited common elements so identified on the Map shall, without further reference thereto, be used in connection with such unit to the exclusion of the use thereof by the other owners of the general common elements, except by invitation. All of the owners of condominium units in this condominium project shall have a non-exclusive right in common with all of the other owners to the use of sidewalks, pathways, driveways, streets and other facilities and improvements intended for common use located within the entire condominium project. No reference thereto, whether such limited common elements are exclusive or non-exclusive, need to be made in any deed, instrument of conveyance or other instrument.

### 6. Description of Condominium Unit.

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

(b) Every contract, deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit designation, the building symbol, followed by the name of this condominium with further reference to the Map, Declaration and Supplement(s), if any, filed for record. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only

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the unit, but also the general common elements and the limited common elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from an owner's unit on, over and across any private street, exclusive use of the limited common elements appurtenant to his unit, together with a non-exclusive right in common with all of the owners in this condominium project to use of sidewalks, pathways, driveways and other facilities and improvements intended for common use located within the condominium project.

7. Form of Ownership-Title.

A condominium unit may be held and owned in any real property tenancy relationship recognized under the laws of the State of Colorado.

8. Inseparability of a Condominium Unit.

Each unit, the appurtenant undivided interest in the general common elements and the appurtenant limited common elements shall together comprise one condominium unit, shall be inseparable and may be conveyed, leased, devised or encumbered only as a condominium unit.

9. Separate Assessment and Taxation of Condominium Units - Notice to Assessor.

Declarant shall give written notice to the County Assessor of the creation of condominium real property ownership interests in this property, as is provided by law, so that each unit and the undivided interest in the general common elements appurtenant thereto shall be deemed a parcel and subject to separate assessments and taxation.

10. Non-Partitionability of General Common Elements.

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

11. Easements for Encroachments.

If any portion of the general common elements encroaches upon a unit or units, or if any portion of a unit encroaches upon the general common elements or upon an adjoining unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or on the units for purposes of marketability of title or other purposes.

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12. Use and Possession.

Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners. Each unit shall be used and occupied for the purpose of lodging or as a dwelling by the owner or by the owner's family, guests, agents, employees, invitees, licensees or tenants.

13. Termination of Mechanic's Lien Rights and Indemnification.

Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner, his agent, his contractor or subcontractor shall be the basis for filing of a lien against the general common elements or against the unit of any other unit owner who did not expressly consent to or request the services or materials. 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 unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in an owner's unit at such owner's consent or request.

14. Association.

The administration of this condominium property shall be governed by the By-Laws of Beaver Bench Condominium Owners Association, a Colorado not for profit corporation, hereinafter referred to as the "Association". An owner of a condominium unit, upon becoming such an owner, shall be a member of the Association and shall remain a member for the period of his ownership.

15. Right of Access.

The Association shall have the irrevocable right to have access to each unit and its appurtenant limited common elements from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the general common elements therein, or for making emergency repair therein necessary to prevent damage to the general or limited common elements or to another unit. Damage to the interior of any part of a condominium unit resulting from the maintenance, repair, emergency repair, or replacement of any of the general common elements, or as a result of emergency repairs within another unit, at the instance of the Association, shall be a common expense of all of the owners in the building. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance, or order of governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any owner, then such owner shall be solely responsible for the costs and expense of repairing such damage.

16. Owner's Maintenance Responsibility for His Unit.

(a) For maintenance purposes, an owner shall be obligated to keep in good repair and condition the materials such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile and floorings, but not including the sub-flooring which make up the finished surfaces of the perimeter walls, ceilings, and floors within his unit, including unit doors and windows. The lines, pipes, wires, conduits or systems (which for brevity are herein and hereafter referred to as utilities) running through his unit which serve one or more other units are general common elements. Such utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Board of Directors. An owner's right to repair, alter and remodel the interior of his unit shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality.

(b) An owner shall maintain and keep in repair the interior of his own unit, including the fixtures thereof. All fixtures and equipment installed within the unit commencing at a point where the utilities enter the unit shall be maintained and kept in good repair and condition by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. An owner shall always keep the limited common elements appurtenant to his unit in a clean and sanitary condition.

17. Maintenance of the Common Elements and Additions.

The maintenance and operation of the common elements shall be the responsibility and the expense of the association and a common expense of all of the condominium owners.

18. Compliance with Provisions of Declaration Mandatory.

Each owner shall comply with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Rules and Regulations, decision and resolutions of the Association adopted pursuant thereto as the same may be lawfully adopted and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Board of Directors or the managing agent in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

19. Revocation or Amendment of Declaration.

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

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20. Assessment for Common Expenses.

All owners shall be obligated to pay the estimated assessments imposed by the Board of Directors or Managing Agent of the Association to meet the common expenses. The assessments shall be made pro rata according to each owner's percentage interest in and to the general common elements. The limited common elements shall be maintained as general common elements, and owners having exclusive use thereof shall not be subject to any special charges or assessments. Assessments for the estimated common expenses shall be due at least quarterly in advance on the first day of each calendar quarter or more frequently as may be determined by the Board of Directors or Managing Agent. The Managing Agent or Board of Directors shall prepare and deliver or mail to each owner an itemized statement showing the various estimated or actual expenses for the assessment period as established by the Board of Directors. Contribution for assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of an assessment period.

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

The Managing Agent or Board of Directors shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other units or condominium buildings, fixtures, equipment and personal property owned by the Association, 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 the insured, which policy or policies shall indemnify the interests of each condominium unit owner and which shall provide for a standard, non-contributory mortgagee clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice to each owner and each first mortgagee. Said Managing Agent or Board of Directors shall upon the request of any first mortgagee, furnish a certified copy of such blanket policy and a separate certificate identifying the interest of the mortgagee. All policies of insurance

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shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or noncompliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Determination of maximum replacement value of all condominium units, for insurance purposes, shall be made annually by one or more written appraisals, copies of which shall be furnished forthwith to each mortgagee of a condominium unit. In addition, each owner shall be notified of such appraisal.

No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

#### 21. Nonpayment of Assessments and Lien.

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

(a) Tax and special assessment liens on the unit in favor of any assessing unit.

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance.

If any assessment shall remain unpaid after fourteen days after the due date thereof, the Board of Directors or Managing Agent may impose a penalty on such defaulting owner in an amount equal to one percent (1%) of such assessment. Likewise a penalty equal to one percent (1%) of the unpaid assessment may be imposed on the first day of each calendar month thereafter so long as such assessment shall be unpaid.

To evidence lien as above provided the Board of Directors or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of accrued penalty thereon, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of Eagle County, Colorado. Such lien for assessment shall attach from the due date of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In the event of any such foreclosure the owner shall be liable for the amount of unpaid assessments, any penalties thereon, the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Association shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

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The amount of the common expenses assessed against such condominium unit shall also be a debt of the owner thereof at the time the assessment is due. Suit to recover a money judgment for unpaid assessments, and any penalties thereon shall be maintainable without foreclosing or waiving the lien securing the same.

Any encumbrancer holding a lien on a condominium unit may pay any unpaid assessment payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same priority as the lien of his encumbrance.

## 22. Statement of Assessments and Liability of Purchasers.

Upon payment of a reasonable fee not to exceed Twenty Dollars (\$20.00) and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium unit, the Association, by its Managing Agent or Board of Directors, shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current average monthly assessment and the date that such assessment becomes due, any penalties due, and credit for advanced payments or for prepaid items, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee not to exceed Twenty Dollars (\$20.00), and upon ten (10) day notice and request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Directors, setting forth the amount of the unpaid assessments and penalties thereon, if any, with respect to the subject unit, the amount of the current average monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, which shall be conclusive upon the Association. Unless such request for a statement or indebtedness shall be compiled with within ten (10) days of such request, then such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments accruing prior to the date of such request.

## 23. Right to Mortgage.

Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage or encumbrance shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create junior mortgages on the following conditions: (i) that any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expense, and other obligations created by this Declaration and by the By-Laws; (ii) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon the said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association and, if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.



24. Repair and Reconstruction of Improvements.

Repair and reconstruction of improvements as used in the Paragraph means restoring such improvements to substantially the same condition in which they existed prior to the damage, with each unit and the general and limited common elements having the same vertical and horizontal boundaries as before. To effect such repair and reconstruction, the proceeds of any insurance collected shall be available to the Association as hereinafter provided.

(a) All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the property for the purpose of repair and reconstruction as is herein provided.

(b) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, 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 improvements.

(c) If the insurance proceeds are insufficient to repair and reconstruct the improvements and if such damage is not more than fifty percent of the replacement value of all the units, 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 on the condominium units in buildings which have been damaged or destroyed and the proceeds of an assessment against the owners of units in such buildings. The deficiency assessment shall be an expense assessed only to the unit owners in the particular destroyed or damaged buildings in such ratio as one unit bears to the total number of units in the destroyed or damaged building. No such owner shall have any right of contribution, or other claim relating to such damage or destruction, against any other owner. Such deficiency assessment shall be in an amount determined exclusively and finally by the Association (after consultation with such owners, appraisers, and others as it deems appropriate) 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 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 as aforesaid and a lien on his unit as a common expense and may be enforced and collected as is provided in Paragraph 21. 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 under the provisions hereof. 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 taxes and special assessment liens in favor of any assessing entity.
- (ii) For payment of the balance of the lien of a first mortgage.
- (iii) For payment of unpaid common expenses.
- (iv) For payment of junior liens and encumbrances in the order of and to the extent of their priority.
- (v) The balance remaining, if any, shall be paid to the unit owner.



(d) If more than fifty percent of the replacement value of the units, not including land, are destroyed or damaged, and if the owners representing an aggregate ownership interest of two-thirds, or more, of the general common elements, do not voluntarily, within one hundred days thereafter, make provisions for reconstruction, which plan must be approved by the Association and 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 the entire premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Condominium Map, and the Bylaws. Such sale shall not confer any right or interest in any property except that property covered by this Declaration or any right or interest in the Association or its property. The insurance settlement proceeds shall be collected by the Association according to each unit owner's interest (as such interest 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 number of the units, building symbol, and the name of the owner. From each separate account, the Association, as attorney-in-fact shall forthwith use and disburse the total amount (of each) of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the unit represented by such separate account. 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 unit owner's fractional interest in the entire premises or property. 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 (c) above.

If the owners representing an aggregate ownership interest of two-thirds or more of the general common elements adopt a plan for reconstruction, which plan has the approval of the Association and the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and provisions of such plan. Any assessment made in connection with such plan 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 as provided in Paragraph 21. 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 with the terms provided, and if not so paid, the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (c) above.

(e) The owners representing an aggregate ownership interest of two-thirds, or more, of the general common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan must have the approval of the Association and the unanimous approval of every first mortgagee of record at the time of the adoption of such plan.

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 the entire premises shall be sold by

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the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the proceeds shall be apportioned between the unit owners on the basis of their respective fractional interests in the entire premises or property, and such apportioned proceeds shall be paid into separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association and shall be further identified by number of the unit, building symbol, and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (c) above.

**25. Condemnation.**

(a) **Consequences of Condemnation.** If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project, shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

(b) **Complete Taking.** In the event that the entire Project is taken of condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the owners according to the ratio of the value of the individual condominium to the value of the entire project as taken (exclusive of the amount paid for personal property); provided that if a standard difference from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 24(d) of this Declaration.

(c) **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: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, as follows: (a) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among Owners in proportion to their respective undivided interests in the Common Elements, (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements 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



ACKNOWLEDGEMENT BY

BENCHMARK AT BEAVER CREEK,  
a Colorado limited partnership,

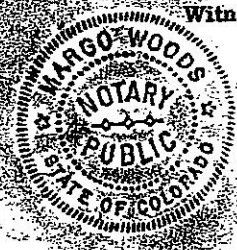
By BENCHMARK-AVON PROPERTIES, a  
general partnership and the sole  
general partner,

By *A. J. Wells*  
A. J. Wells, a managing partner

STATE OF COLORADO )  
  )  
COUNTY OF EAGLE     )

Subscribed and sworn to before me this 11th day of April,  
1977, by A. J. Wells, as a Managing Partner of Benchmark-Avon Properties.

Witness my hand and official seal. My commission expires: May 30, 1979



*Margo Woods*  
Notary Public for Colorado

POSTED  
8-24-07



EXHIBIT "A"  
TO  
AMENDED  
CONDOMINIUM DECLARATION  
FOR  
BEAVER BENCH CONDOMINIUMS

The Real Property referred to in the foregoing Condominium Declaration is legally described as follows:

Lot 7, Block 2, Benchmark at Beaver Creek Subdivision, as per the recorded plat thereof in the real property records of the County of Eagle, State of Colorado, U.S.A.

The above described real property is held by the Declarant as an estate for years (leasehold estate) pursuant to a Ground Lease between the Declarant, as Lessee, and Benchmark at Beaver Creek, as Lessor. The individual unit owners, at the time of purchase of any individual condominium unit, shall be required to execute the Master Ground Lease, which Master Ground Lease will supersede the aforementioned Ground Lease, and which will have the individual unit owner as Lessee, and Benchmark at Beaver Creek, as Lessor, leasing to Lessee an undivided interest in the above described real property proportionate to his interest in the general common elements as the same are shown in Exhibit B, below.

EXHIBIT "B"  
TO  
AMENDED  
CONDOMINIUM DECLARATION  
FOR  
BEAVER BENCH CONDOMINIUMS

The undivided proportional interests of each Unit in the Common Elements shall be as follows:

<u>UNIT NUMBER</u>	<u>PERCENTAGE INTEREST</u>
A-1	2.76285%
A-2	2.76285
A-3	1.43259
A-4	1.96981
A-5	2.76285
A-6	1.43259
A-7	1.96981
A-8	1.96981
A-9	1.43259
A-10	2.76285
A-11	2.76285
A-12	3.74137
A-13	3.74137
A-14	1.43259
A-15	1.96981
A-16	2.76285
A-17	1.43259
A-18	1.96981
A-19	1.96981
A-20	1.43259
A-21	2.76285
A-22	2.76285

POSTED  
8-24-07



EXHIBIT "B"

-CONTINUED-

<u>UNIT NUMBER</u>	<u>PERCENTAGE INTEREST</u>
B-1	2.76285
B-2	2.76285
B-3	1.43259
B-4	1.96981
B-5	2.76285
B-6	1.43259
B-7	1.96981
B-8	1.96981
B-9	1.43259
B-10	2.76285
B-11	2.76285
B-12	3.74137
B-13	3.74137
B-14	1.43259
B-15	1.96981
B-16	2.76285
B-17	1.43259
B-18	1.96981
B-19	1.96981
B-20	1.43259
B-21	2.76285
B-22	2.76285

POSTED  
6-4-07



150247

STATE OF COLORADO }  
County of EAGLE }

I hereby certify that this instrument was  
filed for record in my office on

APR 11 1977

100 ..... of which P is and recorded  
in Book 253 ..... Page 950  
MARGARET A. GALL, County Clerk & Recorder  
Stan Wall ..... 3-7-77

\$36.00 pd.

Bench Mark Cordes

Box 80

Aurora Colo

81620

POSTED  
8-24-07