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DECLARATION OF CONDOMINIUM

FOR

SUNRIDGE AT AVON II

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DECLARATION OF CONDOMINIUM

FOR

SUNRIDGE AT AVON II

THIS DECLARATION made on the date hereinafter set forth by The Heritage Group, a Colorado limited partnership, hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of property situate in the County of Eagle, and State of Colorado, described on Exhibit A attached hereto and incorporated herein by reference (the "Properties"); and

WHEREAS, Declarant will construct condominium units on the Properties, together with other improvements thereon; and

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

WHEREAS, Declarant will convey interests in the Properties subject to the protective covenants, conditions, restrictions, reservations, liens and charges as herein-after set forth;

NOW, THEREFORE, Declarant hereby declares that the Properties are hereby established as a condominium project under the Condominium Ownership Act of Colorado, and that they 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 Properties 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 the Properties, their grantees, successors, heirs, legal representatives and assigns.

ARTICLE I

DEFINITIONS OF WORDS USED IN THIS DECLARATION

1. "Association" shall mean the Sunridge at Avon II Condominium Association, a Colorado nonprofit corporation, its successors and assigns.
2. "Board" shall mean the Board of Directors of the Association.
3. "Building" shall mean a structure housing one or more Units as shown on the Condominium Map.
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" 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 Group, a Colorado limited partnership, its successors and assigns.

7. "Declaration" shall mean this document of Declaration of Condominium for Sunridge at Avon II as it may be amended from time to time.

8. "Deed of Trust" shall mean a first deed of trust and shall be synonymous with a first mortgage or similar voluntary encumbrance of first priority.

9. "General Common Elements" means the Properties and improvements thereon including, but not limited to, the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, attic spaces, fire escapes, common entrances and exits of such Building or Buildings; basements, yards, lawns, gardens, and parking areas; the premises for the lodging of custodians or persons in charge of the project, if any; installation of central common services such as power, light, gas, hot and cold water, heating, refrigerations, and central air conditioning, if any; the tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; such community amenities as may be provided for in this Declaration and specifically designated as general common elements on the maps; and all other parts of the project necessary or convenient to its existence, maintenance, and safety, or normally in common use. Provided, however, the General Common Elements shall not include the Units.

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

15. "Unit" shall mean the separate estate in an individual air space unit excluding the interest in the General Common Elements appurtenant to such air space unit.

ARTICLE II

CONVEYANCES — DESCRIPTION OF CONDOMINIUM UNITS

Section 1. DIVISION INTO FEE SIMPLE ESTATES

The Properties and the improvements thereon are to be divided into one hundred and ninety-eight (198) fee simple estates. Each such estate shall consist of the separately designated Unit and an undivided percentage interest in and to the General Common Elements as such is set forth in Exhibit B attached hereto and incorporated herein by reference.

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. Notwithstanding any provision herein to the contrary, Declarant shall have the right to file the Condominium Map in supplements or 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 CONDOMINIUM UNIT.

Every contract, deed, lease, mortgage, deed of trust, will, or other instrument may legally describe a Condominium Unit by its identifying Unit number, the Building designation, followed by the words "Sunridge at Avon II Condominiums" with reference to the Condominium Map and Declaration. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements and amendments to the Map and Declaration without specific reference thereto. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit along with the undivided interest in the General Common Elements and all other rights appurtenant to the Unit. Each such description shall be construed to include a perpetual non-exclusive easement for ingress to and egress from a Unit on, over and across the General Common Elements and exclusive use of the Limited Common Elements appurtenant to a Unit.

Section 4. INTEGRATION OF INTEREST AND NONPARTITION.

Each Unit and the undivided interest in the General Common Elements, 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 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 condominium ownership of the Properties 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 for the purpose of separate assessment and taxation.

Section 6. LIENS AGAINST CONDOMINIUM UNITS

After completion of any alterations, modifications or additions to the improvements described on the Map, 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 circumstances as liens and encumbrances may arise or be created upon any other parcel of real property subject to individual ownership.

ARTICLE III

OWNER'S 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: The patios, sun decks, balconies and porches, if any, appurtenant to each Unit.

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, including but not limited to the following:

- A. To regulate parking;
- B. To suspend the voting rights by an Owner for any period during which any assessment against the Owner's condominium Unit remains unpaid, and for a period not to exceed thirty (30) days for any infraction of the Rules.

The Association shall have the right to assign parking spaces within the General Common Elements. Each Condominium Unit shall be entitled to the use of two parking spaces whether assigned or not. Every owner, guests, members of Owner's family, servants, employees, invitees, lessees and licensees shall adhere strictly to the Rules.

Section 3. USE OF GENERAL COMMON ELEMENTS.

Subject to the Rules, 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 to the General Common Elements 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 parking space may be leased separately. A Condominium Unit may be leased only for residential use. Any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation, Bylaws of the Association, or the Rules shall be a default under the lease enforceable by the Association. In addition to the foregoing, at its option, the Association may provide a written lease form which all Owners shall use in cases of leases of three months or more.

ARTICLE IV

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, provided that access by vehicle shall be only over Private Streets and driveways provided therefor.

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 or company furnishing a service covered by the general

easement herein provided or furnishing a service to or for the Town of Avon or Eagle County, request a specific easement, including a vehicular 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, or in the case or circumstances existing within a Unit which may affect the health or well-being of other Owners or the Association, 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 V

USE AND OTHER RESTRICTIONS

Section 1. USE.

The General Common Elements and Units shall be used for residential purposes; for services, activities and recreation in conjunction with said residential use; for the maintenance and administration of the aforementioned; and for Declarant's sales purposes.

Section 2. TEMPORARY USE BY DECLARANT.

Notwithstanding any provisions herein contained to the contrary, during the period of construction or sale, it shall be expressly permissible for Declarant to maintain upon the General Common Elements, without charge, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental for construction or sales purposes, including, but not limited to, a business office, storage area, construction

yards and structures, signs, model Units, and sales offices. For sales purposes, Declarant, its agents and prospective purchasers also shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the General Common Elements at any and all reasonable times, without charge and without permission from any Owner or from the Association being required.

Section 3. PROHIBITIONS.

All use and occupancy of the General Common Elements and Units shall be subject to and governed by the Rules. No damage or waste shall be committed to the General Common Elements. No Owner shall alter any of the General Common Elements without the prior written consent of the Association. Nothing shall be done within the General Common Elements which would impair the structural integrity of any improvement located on the General Common Elements. Any fencing or screening of a patio or porch must have the written approval of the Association.

Section 4. 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 which might cause cancellation of such insurance, except with the prior written consent of the Board.

Section 5. 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 6. 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 or within any Unit which is or might be unsafe or hazardous to any person.

Section 7. SIGNS.

No signs, billboards or advertising devices of any nature shall be erected or maintained on any part of the Properties. The Association may erect signs or notices for identification purposes in accordance with applicable state and municipal laws or codes.

Section 8. PETS.

No animals, livestock or poultry of any kind shall be raised, bred or kept on the Properties or within the Units except that an Owner, but not a tenant, guest, employee, licensee or invitee of such Owner, may keep dogs, cats or other household pets not to exceed two in number, provided that such pets shall be subject to rules and regulations to be established by the Association and to any governmental ordinances or laws. Pets shall be leashed at all times when outside the Unit of an Owner, and Owner shall confine his pets for excretion to the Owner's Unit. Pets constituting a nuisance, in the sole opinion of the Association, may be ordered by the Association to be kept within the Unit of the Owner or ordered expelled from the Properties.

Section 9. TRASH AND UNSIGHTLY USES.

Unightly objects and materials shall not be placed upon the General Common Elements and no part of the General Common Elements may be used as a dumping ground for garbage, trash or other waste, and the same shall be disposed of in a sanitary manner. The Association shall have the right to enter upon any General Common Elements and to remove such refuse piles or other unsightly objects and materials at the expense of the Owner, and such entry shall not be deemed a trespass.

Section 10. MINERAL EXPLORATION.

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

Section 11. PARKING AREAS.

No vehicle of any type may be parked on the General Common Elements except in parking spaces designated by the Association. No commercial type of vehicle, no trucks and no recreational vehicles shall be stored or parked on the General Common Elements or Limited Common Elements, except in areas designated by the Association. A recreational vehicle shall include for purposes of this Declaration, motor homes, motor coaches, buses, pickup trucks with camper tops or similar accessories, camping trailers or trailers of any type. Parking spaces shall be used only for parking automobiles and motorcycles and not for any other storage purposes. Motorcycles shall not be stored on patios, balconies or porches.

Section 12. MECHANIC'S LIENS.

No labor performed or materials furnished with the consent or at the request of an Owner, his 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 or against any interest in the General Common Elements. 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 Units 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 the contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto including attorney's fees and expenses. All such amounts may be added to Owner's regular assessments.

Section 13. PERSONAL BUSINESS.

No business activities of any kind whatsoever shall be conducted in any Unit 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. This paragraph shall not apply to business activities of the Association or to any Association designated condominium rental office located on the Property, and it shall be expressly permissible for the Association and any condominium rental office designated by the Association to conduct reasonable business activities on the Property.

Section 14. ANTENNAS AND LIGHTS.

Without prior written approval and the authorization of the Association, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the General Common Elements or improvements thereon. No exterior lights which disturb the residents of any adjacent Unit shall be installed by any Owner.

Section 15. KEYS AND LOCKS.

Each Owner shall at all times provide the Association or Manager with keys to his Unit. In the event the lock to a Unit is changed, the Owner of such Unit shall forthwith provide the Association or Manager with the key thereto.

ARTICLE VI

SUNRIDGE AT AVON II CONDOMINIUM ASSOCIATION

Section 1. DUTIES AND RESPONSIBILITIES OF SUNRIDGE AT AVON II CONDOMINIUM ASSOCIATION.

Declarant has caused the 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 shall have the following duties, rights and powers:

- A. To collect assessments as provided herein from Owners; to collect delinquent assessments by suit or otherwise.
- B. From funds collected, to provide for maintenance, repair, replacement, 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.
- 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 or the other contracting party 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 deposit funds in the hands of the Board which are not necessary for immediate disbursement in insured savings accounts of national or state banks or savings and loan institutions.
- J. To file legal protests, formal or informal, with authorities against the granting by authorities of zoning ordinances or variances concerning any property within a reasonable proximity of the Properties which might affect the value of any Owner's interest in the General Common Elements.
- K. To designate and assign to Owners available storage facilities within the General Common Elements for the use, exclusive or otherwise, of Owners.
- L. 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.
- M. To do any other act not inconsistent with the terms of the Articles of Incorporation or Bylaws of the Association or the Declaration which may be reasonably necessary to carry out the duties, whether such duties are express or implied, of the Association.

Section 2. MEMBERSHIP.

The following shall be entitled to membership in the Association.

- A. All Owners shall automatically become Members of the Condominium 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.

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B. Declarant or its successors, designees or assigns shall be Members.

Section 3. 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 interest 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 be converted to Class A membership on the happening of either of the following events, whichever 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 31, 1984.

Section 4. 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 that 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 VII

ASSESSMENTS

Section 1. ASSESSMENTS.

Each Owner, by acceptance of a deed, agrees to pay the Association (1) regular monthly assessments or charges, (2) special assessments for capital improvements to be fixed, established and collected from time to time as herein provided, and (3) such other assessments as may be authorized herein. Such assessments, together with interest, the cost of collection and attorney's fees shall be charged to the Condominium Unit and shall be a continuing lien upon the Condominium Unit against which each assessment is made in the event of delinquency in payment as allowed in this Article VII, Section 9. 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 personal obligation for delinquent assessment shall not pass to an Owner's successor in title unless expressly assumed. 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. Regular and special assessments shall be based upon an Owner's undivided interest in and to the General Common Elements, and there shall be no division of the assessment charge between the General Common Elements and Limited Common Elements.

Section 2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively 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, including but not limited to: the provision of services and facilities related to the use and enjoyment of the General Common Elements; the maintenance, repair and replacement of underground utilities, paving, curbs, gutters and drainage swales on the streets, lighting, walkways, Buildings and other facilities; provisions for snow removal, grounds upkeep, sprinkler systems, landscaping, garbage pickup, water and sewer service, recreational programs; maintenance on adjacent streets; administration expenses, working capital, rental and acquisition of real or personal property; and such expenses as the Association, in its opinion, shall determine to be necessary and desirable including the establishment and maintenance of a cash reserve and a sinking fund for all of the foregoing purposes. Such expenses shall include, but not be limited to, an adequate reserve fund for the acquisition, construction, maintenance, replacement and repair of those elements of the General Common Elements which must be replaced on a periodic basis, to be charged against the Owners as part of their regular assessment.

Section 3. REGULAR ASSESSMENTS.

All Owners shall be obligated to pay estimated regular assessments imposed by the Board to meet expenses incurred by the Association in the performance of its rights and duties. Regular assessments shall be due in advance on the first day of each calendar month, or less frequently as may be determined by the Board. The Manager or the Board shall prepare and deliver or mail to each Owner an assessment statement. Regular assessments shall be based upon the cash requirements deemed to be such aggregate sum as the Board shall from time to time determine is to be paid by all of the Condominium Unit Owners to provide for payment of all estimated expenses growing out of or connected with the Association's performance of its duties and rights.

Section 4. 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 of capital improvements, including the necessary fixtures and personal property related thereto. If any such assessment exceeds \$15,000.00, the same must have assent of two-thirds (2/3) of each class of Members voting in person or by proxy at a meeting duly called for such purpose or at the annual meeting, but only if at least one-third (1/3) of the Members are

present in person or by proxy. Written notice shall be sent to all Owners of record not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Notwithstanding the above, upon the 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 a special assessment prorated and levied equally against all Units, including Declarant's, and shall be collectible by the Association from the Owners in accord with the terms of this Declaration without further approval of the membership being required.

Section 5. FINES.

The Board shall have the right to assess a fine against an Owner not exceeding \$100.00 for each violation of this Declaration, the Bylaws, the Rules or the Articles of Incorporation of the Association. Such fine may be assessed additionally for each day the violation continues after written notice thereof is given the Owner. Such fines shall be deemed to be assessments for purposes of Section 9 of this Article.

Section 6. 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 individual Unit and the Owner thereof, including, but not limited to, fines, repairs and replacements (to any Unit or the General Common Elements) caused by the negligent or willful acts of said 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.

Section 7. DECLARANT'S ASSESSMENTS.

Monthly and special assessments are to be assessed for all Condominium Units not owned by Declarant. If the Assessments assessed with respect to all Condominium Units not owned by Declarant are insufficient, Declarant shall be assessed, for all Condominium Units owned by it in the aggregate, an amount equal to the amount required to meet actual expenses of the Association. At such time as Declarant no longer holds a Class B Membership, or December 31, 1984, whichever is sooner, Declarant shall pay assessments on the same basis as any other Owner.

Section 8. INITIAL CAPITAL CONTRIBUTION.

The Association shall levy and collect from each Owner at the closing when the Owner acquires a Condominium Unit, a sum equal to two (2) times the original regular monthly assessment apportioned to the Condominium Unit. Said sum may be used by the Association for working capital, for application against a delinquent account of an Owner, or for emergency needs, and shall be refunded to the Owner (except as herein-after provided) upon the sale or transfer of the Condominium Unit less any amount then due by said Owner to the Association. Such amount may be transferred to a new Owner upon a settlement sheet adjustment between a seller and purchaser. Deficiency amounts in any Owner's account shall be promptly restored upon request by the Board to maintain an amount equal to two (2) times the original estimated assessment for such Condominium Unit. The existence of this reserve account shall in no way relieve any Owner from the duty to pay assessments when due.

Section 9.

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, 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 due date 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 regular monthly assessments 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 lien of any recorded Deed of Trust (it being understood that wherever "Deed of Trust" is used in this Declaration, it shall include "first mortgage") 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, and if after the filing of a 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 the 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 beneficiary of the Deed of Trust securing such Condominium Unit or 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, except that the beneficiary of a Deed of Trust need not file a lien for any such payment, such payment being of the same priority as the Deed of Trust.
- 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. The amount of assessments remaining unpaid at such transfer of title shall remain a personal obligation of the delinquent Owner.

ARTICLE VIII

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.

Except as otherwise provided in this Declaration, 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 all water, sewer, electrical and other systems other than those portions of such systems which are within a Unit.

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- B. Maintenance, repair and replacement of roofs, steps, chimneys, outer surfaces of exterior walls, patios, balconies, porches, sun-decks, doors, passageways, and fences which are not appurtenant to any one Unit.
- C. Painting, repainting and resurfacing of Building exteriors.
- D. Decorating of the General Common Elements, other than interior surfaces within the Unit, 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.

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 heating units, air conditioning units, refrigerators, ranges and other kitchen appliances, lighting fixtures and other electrical appliances which are within and appurtenant to a Unit; maintenance, replacement and repair of patios, sundecks, balconies, patio fences, patio or balcony doors, and porches which are 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 a point where utility lines, pipes, wires, conduits or systems enter 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.

Section 3. DUTY TO INSPECT PREMISES AND TO REPAIR DEFECTS.

Each Owner shall have the duty to make reasonable inspections of the Owner's Unit, from time to time, to determine if said Unit contains any obvious defects. In the event of discovery of such a defect, the Owner shall have the duty immediately to give written notice of the defect to the Association. In the event a defect may affect the Unit of any other Owner or the General Common Elements, the Owner whose Unit has the defect shall repair the same in a workmanlike fashion within a reasonable time following discovery thereof, if such repair is a responsibility of the Owner according to this Article. Upon the failure of such Owner to do repair, the Association shall have the duty to enter into and upon the Unit and effect such repair, the cost of which shall be chargeable to such Owner by assessment or otherwise.

Section 4. WILLFUL OR NEGLIGENT ACTS.

In the event that any maintenance, repair or other work is required because of the willful or negligent action or lack of action by any Owner, the Owner's family, guests, tenants, invitees, lessees or licensees and such maintenance, repair or other work is not covered or paid for by insurance for the benefit of the Association, the Board may perform such work or cause the same to be performed at such Owner's cost and expense and may make an assessment to recover payment thereof against such Owner, provided,

except in event of emergency, such Owner shall be given ten (10) days prior notice within which to perform the required maintenance, repair or work.

ARTICLE IX

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: (1) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the first mortgagee or first mortgagee's designee, or (2) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the company's Board of Directors, policyholders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds. The types of 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 Properties, the nature of which is a Common Element (including all of the 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 beneficiary of a Deed of Trust of a Condominium Unit, which shall provide that the loss, if any, thereunder, shall be payable to the Association, as attorney in fact.
- B. If the Properties are 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 Properties 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 Properties.
- 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 \$1,000,000 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 Properties. 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 form now or hereafter required by law.
- E. The Association shall purchase, in an amount of not less than one hundred fifty percent (150%) 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 Properties, including plate or other glass insurance and any personal property of the Association located thereon.

The Association and each Owner hereby waive and release any and all claims which they may have against any Owner, the Association, its officers, members of the Board, its employees and agents, the Declarant and any Manager and its respective employees or agents for damages to the General Common Elements or to any personal property located on the Properties caused by any casualty to the extent that such damage is covered by fire or other form of casualty insurance. Mortgagee endorsements shall be made when the Owner's interest is subject to an encumbrance. All policies of insurance 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 beneficiaries of Deeds of Trust. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all beneficiaries of Deeds of Trust at least ten (10) days prior to the expiration of the then current policies. All insurance shall be carried in blanket form naming the Association as attorney in fact.

Prior to obtaining any policy of fire insurance or renewal thereof, the Board or Manager 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 Properties, 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 costs, 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 Unit, shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association or the Manager shall have no responsibility therefor.

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.

The Association, as attorney in fact, shall receive the proceeds of any insurance payments to be made under policies obtained and maintained by the Association pursuant to this Article. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Buildings shall not be rebuilt, the proceeds shall be distributed in the same manner as set forth in Article X, Section 3.

ARTICLE X

DAMAGE, DESTRUCTION OR OBSOLESCENCE

Section 1. ASSOCIATION — ATTORNEY IN FACT.

The Declaration does hereby make mandatory the irrevocable appointment of an attorney in fact to deal with the Property upon its destruction or damage, for its repair and reconstruction or its obsolescence and to maintain, repair and improve the Condominium Units, Buildings and General and Limited Common Elements. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney in fact herein provided. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the Property upon its damage or destruction or obsolescence as is herein-after provided. As attorney in fact, the Association, by its President and Secretary or its other duly authorized officers or agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Condominium Unit Owner which are necessary and appropriate to exercise the powers herein granted. "Repair" and "reconstruction" of the improvements as used in the succeeding Sections means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement unless otherwise decided in accordance with the provisions set forth hereinafter.

Section 2. RECONSTRUCTION — SUFFICIENT INSURANCE PROCEEDS.

In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney in fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney in fact, to cause the repair and restoration of the improvement(s). Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction.

Section 3. RECONSTRUCTION — INSUFFICIENT INSURANCE PROCEEDS.

If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than fifty percent (50%) of the total replacement cost of all of the Condominium Units in the project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney in fact, using the proceeds of insurance and the proceeds of a special assessment (not subject to Owners' approval as set forth in Article VII, Section 4) to be made against all of the Owners and their Condominium Units. Such special assessment shall be made pro rata according to each Owner's interest in the General Common Elements, and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney in fact, to cause the repair or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article VII, Section 9. In addition thereto, the Association, as attorney in fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney in fact, pursuant to the provisions of this paragraph. Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at the rate of fifteen percent (15%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney in fact, in the following order:

- A. For payment of taxes and special assessment liens in favor of any governmental or quasi-governmental assessing entity and the customary expense of sale;
- B. For payment of the balance of the lien of any Deed of Trust;
- C. For payment of unpaid assessments and all costs, expenses and fees incurred by the Association;
- D. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- E. The balance remaining, if any, shall be paid to the Condominium Unit Owner.

Section 4. SUBSTANTIAL DAMAGE — INSUFFICIENT INSURANCE PROCEEDS.

If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if such damage is more than fifty percent (50%) of the total replacement cost of all of the Condominium Units, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the General Common Elements do not voluntarily, within one hundred (100) days thereafter, make provisions and submit a plan for reconstruction, which plan must have the approval or consent of all of the beneficiaries of Deeds of Trust, then 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 Properties shall be sold by the Association pursuant to the provisions of this Section, as attorney in fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and the Bylaws. Assessments shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's interest in the General Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account the Association, as attorney in fact, shall forthwith disburse the total amount of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any Deed of Trust against the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the Properties. Such apportionment shall be based upon each Condominium Unit Owner's 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 Section 3, A through E herein.

Section 5. RECONSTRUCTION ASSESSMENTS.

In the event of such damage or destruction under Section 4 of this Article, and if a plan for reconstruction is adopted as therein provided, then all of the Owners shall be bound by the terms and other provisions of such plan. Any special assessments (which special assessments shall not be subject to Owners' approval as set forth in Article VII, Section 4) made in connection with such plan shall be made pro rata according to each Owner's 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 (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney in fact, to cause the repair and restoration of improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessments. Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article VII, Section 9. In addition thereto, the Association, as attorney in fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of fifteen percent (15%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney in fact, for the same purposes and in the same order as is provided in Section 3, A through E herein.

Section 6. OBSOLESCENCE - RECONSTRUCTION.

The Owners representing an aggregate ownership interest of eighty percent (80%), or more, of the General Common Elements may agree that the General Common Elements are obsolete and adopt a plan for the renewal and reconstruction, which plan has the approval of all of the beneficiaries of Deeds of Trust 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, and the expense of renewal and reconstruction shall be payable by all of the Owners as a special assessment (not subject to Owners' approval as set forth in Article VII, Section 4) whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney in fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of fifteen percent (15%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of the Condominium Unit shall be used and disbursed by the Association, as attorney in fact, for the same purposes and in the same order as is provided in Section 3, A through E herein.

Section 7. OBSOLESCENCE -- SALE.

The Owners representing an aggregate ownership interest of eighty-five percent (85%), or more, of the General Common Elements may agree that the Condominium Units are obsolete and that the same should be sold. Such plan or agreement must have the unanimous approval of every beneficiary of Deeds of Trust. In such instance, the Association shall forthwith record a notice setting forth the Owner's determination to sell, and upon the recording of such notice by the Association's President and Secretary, the Properties 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 of Incorporation and the Bylaws. The sales proceeds shall be apportioned among the Owners on the basis of each Owner's interest in the General Common Elements, 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 the Condominium 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 Section 3, A through E, herein.

ARTICLE XI

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 Properties 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 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 as attorney in fact.

Section 3. COMPLETE TAKING.

In the event that the entire Properties are taken or condemned, 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 Properties as a whole is employed to measure the condemnation award by 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 principles set forth in the last preceding paragraph, the Association shall, as soon as practicable and without contribution distribute the condemnation award in the same manner and to the same extent as provided in Article X, Section 3, A through E.

Section 4. PARTIAL TAKING.

In the event that less than the entire Properties are taken or condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each ownership shall be entitled to a share of the condemnation award to be determined in the following manner. As soon as practicable, the Association shall apportion: (1) the amounts allocated to taking of or injury to the General Common Elements among Owners in proportion to their respective undivided interests in the General Common Elements, (2) the total amount allocated to severance damages to those Units which were not taken or condemned according to such Units' undivided interest in the General Common Elements, (3) the respective amounts allocated to the taking of or injury to a particular Unit or improvements an Owner had made within his own Unit to the particular Unit involved, and (4) the amount allocated to consequential damages and any other taking or injury as the Association determines to be equitable in the circumstances. When 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 in the same manner and to the same extent as provided in Article X, Section 3, A through E.

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, 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 at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration showing such altered ownership interest. Such amendment shall be executed by the Owners, as shown by the records in the office of the Clerk and Recorder of Eagle County, Colorado, of Condominium Units representing an aggregate ownership interest of two-thirds (2/3) or more of the General Common Elements and not less than seventy-five percent (75%) of the beneficiaries of Deeds of Trust.

ARTICLE XII

MORTGAGEE'S RIGHTS

Section 1. NOTICE TO MORTGAGEE.

Each beneficiary of a Deed of Trust on any Condominium Unit upon written request by such beneficiary 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 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 in excess of \$1,000.00, or any part of the General Common Elements in excess of \$10,000.00;
- 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 beneficiary'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 beneficiary of a 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 beneficiary 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; provided, however, that such failure to deliver notice shall not relieve the Association from any damages to the beneficiary of a Deed of Trust for which the Association would otherwise be liable. The Association need not inquire into the validity of any request made by a beneficiary of a Deed of Trust hereunder and in the event of multiple requests from purported beneficiaries of Deeds of Trust on the same Condominium Unit, the Association shall honor the most recent request received.

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 beneficiary 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 giving notice of such violation, breach or failure to comply. However, any purchaser on foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration, including Article VII, Section 9, E.

ARTICLE XIII

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. 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 upon recordation of an amendment to this Declaration executed by Owners representing not less than seventy-five percent (75%) of all Owners' interests in the Condominium Units and the beneficiaries of all Deeds of Trust encumbering the Properties or any portion thereof. 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. MORTGAGEE'S RIGHTS.

The above notwithstanding, the prior written approval of all beneficiaries of Deeds of Trust on the Condominium Units will be required for any of the following:

- A. An amendment to the Declaration which (1) changes the respective percentage ownership of the General Common Elements or the basing of certain assessments upon such ownership interest, or (2) amends this Article, Section or any other provision which specifically grants rights to beneficiaries of Deeds of Trust hereunder or (3) is otherwise a material amendment, including but not limited to a change in the method for allocating hazard insurance proceeds.
- B. The alienation, release, transfer, hypothecation or other encumbrance of the General Common Elements subject to Declarant's rights herein; except that the consent of beneficiaries of Deeds of Trust shall not be required for action by the Association to grant easements for utilities and similar or related purposes.
- C. The abandonment of the condominium development or the removal of any part or all of the General Common Elements from the provisions of this Declaration.

- D. The effectuation of any decision by the Association to terminate professional management and to assume self-management;
- E. The use of hazard insurance proceeds for any other purpose other than for the repair, replacement or reconstruction of any damaged improvements, except as provided in Article X.
- F. The effectuation of any decision by the Association not to maintain fire and extended coverage insurance on all Units within the project and on the General Common Elements as provided in this Declaration.

Section 3. SPECIAL AMENDMENTS.

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 (1) 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 (2) 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, other evidence of obligation or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record Special Amendments. No Special Amendment made by Declarant shall affect or impair a deed of trust upon a Condominium Unit or any warranties made by an Owner or beneficiaries 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 XIV

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. CAPTION.

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.

ATTEST

Christine Leger

(Seal)



THE HERITAGE GROUP
a Colorado limited partnership,
By its sole general partner,
Heritage Financial Corporation

By

Richard H. Rossmiller, President

STATE OF COLORADO

)
) ss.
)

COUNTY OF ARAPAHOE

The foregoing Declaration of Condominium for SUNRIDGE AT AVON II was presented before me this 24th day of June, 1980, by Richard H. Rossmiller, President of Heritage Financial Corporation, as Sole General Partner of THE HERITAGE GROUP, a Colorado limited partnership.



Witness my hand and official seal.

My Commission expires: 8-18-82

Notary Public

EXHIBIT B

Each Unit number 101, 102, 103, 104, 201, 202, 203 and 204 in Buildings A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q and R shall have a .48501% undivided interest in and to the General Common Elements.

Each Unit number 301 in Buildings F, I, K, P and R shall have a .48501% undivided interest in and to the General Common Elements.

Each Unit number 302 in Buildings F, I, K, P and R shall have a .48501% undivided interest in and to the General Common Elements.

Each Unit number 303 in Buildings A, B, C, D, E, G, H, J, L, M, N, O and Q shall have a .48501% undivided interest in and to the General Common Elements.

Each Unit number 304 in Buildings A, B, C, D, E, G, H, J, L, M, N, O and Q shall have a .48501% undivided interest in and to the General Common Elements.

Each Unit number 302 in Buildings B, C, D, E, G, H, J, L, M, N, O and Q shall have a .70541% undivided interest in and to the General Common Elements.

Each Unit number 304 in Buildings F, I, K, P and R shall have a .70541% undivided interest in and to the General Common Elements.

Unit number 302 in Building A shall have a .70623% undivided interest in and to the General Common Elements.

WEL 6/24/60

EXHIBIT A

Lots 1 and 2, Block 3, Official Plat, Town of Avon, Eagle County, Colorado, and Final Subdivision Plat, Amendment No. 12, Benchmark at Beaver Creek, recorded April 29, 1960 in Book 392 at Page 285.

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WEL 4/24/60