

CONDOMINIUM DECLARATION

FOR

CEMENT CREEK DUPLEX

(A Condominium)

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CONDOMINIUM DECLARATION

FOR

CEMENT CREEK DUPLEX

(A Condominium)

KNOW ALL MEN BY THESE PRESENTS,

WHEREAS, Norman E. Klein, Mary Louise Klein and W.S. Henrion, hereafter the "Declarant," is the owner of the following described real property situated in the County of Gunnison, State of Colorado:

Lot 7, Block No. 1, Crested Butte South,
Filing No. 1.

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

WHEREAS, Declarant has constructed a building and other improvements appurtenant thereto on the above described property which shall consist of separately designated Condominium Units; and

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of real property estates consisting of the area or space contained in each of the Units in the building improvement, and the co-ownership by the individual and separate Owners thereof, as tenants in common, of all the remaining real property hereinafter defined and referred to as the General Common Elements;

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

1. Definitions. Unless the context shall expressly provide otherwise, the following definitions shall apply:

(a) "Apartment," "Apartment Unit," or "Unit" means an individual air space which is contained within the unfinished interior surfaces of the perimeter walls, floors, windows, ceilings and doors of a Unit in the building as shown on the map to be filed for record, together with all fixtures and improvements therein contained but not including any of the structural components of the buildings, if any, within in a Unit.

(b) "Building" means the building improvement comprising a part of the property.

(c) "Common Elements" means and includes:

- (1) The land on which the building is located;
- (2) The foundations, columns, girders, beams, supports, main walls, roofs and the portions of the basement which are not designated as units;
- (3) The installations consisting of equipment and materials making up central services such as tanks,

pumps, motors, fans, compressors, ducts, power, pipes, light, gas, hot and cold water, heating and ventilating;

(4) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(d) "Common Expenses" means and includes:

(1) All sums lawfully assessed against the General Common Elements;

(2) Expenses of administration and management, maintenance, repair or replacement of the General Common Elements;

(3) Expenses declared common expenses by the Unit Owners.

(e) "Condominium Unit" means a Unit together with the undivided interest in the General and Limited Common Elements appurtenant to such Unit.

(f) "Entire Premises," "Premises," "Project" or "Property" means and includes the land, the building, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

(g) "General Common Elements" means those parts of the Common Elements which are not designated as "Limited Common Elements" on the map.

(h) "Limited Common Elements" means those parts of the Common Elements reserved for the exclusive use off the Owners of less than all of the Condominium Units in the building.

(i) "Majority of Owners" means those Owners holding 51% of the votes in accordance with the percentages assigned in Paragraph 3.

(j) "Managing Agent," as used herein, shall mean the Declarant, or its designated agent or successor.

(k) "Map" or "Plan" means and includes the engineering survey of the land located thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements.

(l) "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium Unit or any part thereof is encumbered.

(m) "Mortgagee" means any person named as the Mortgagee or the beneficiary under any mortgage under which the interest of any Owner is encumbered.

(n) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, owning one or more Condominium Units; the term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

2. Condominium Map. Prior to the first conveyance of a Condominium Unit, Declarant shall cause to be filed for record a map. The map shall depict and show at least the following: The legal structural components or supporting elements of the

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Building; the thickness of the common walls between Units and the Unit numbers or other designation. The Map shall contain the dual certificate of a registered engineer certifying that the Map substantially depicts the layout, measurements and location of the Building, the Units, the Unit designations, the dimensions of such Units, the elevations of the unfinished floors and ceilings as constructed and that the Map was prepared subsequent to substantial completion of the improvements depicted.

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

3. Division of Property into Condominium Units. The real property and improvements to be constructed thereon are hereby divided into the following fee simple estates:

Two (2) separate fee simple estates, each such estate consisting of one Unit together with an appurtenant undivided one-half (1/2) interest in and to the General Common Elements. The General Common Elements shall be held in common by the Owners thereof. Each Condominium Unit is described on the Map, which by this reference is made a part hereof. Each Condominium Unit shall be identified in the Map by the number shown thereon.

4. Limited Common Elements. The open wood decks contiguous to each unit are limited common elements.

5. Inseparability of a Unit. Each Unit and the undivided interest in the General Common Elements shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Condominium Unit.

6. Description of a Condominium Unit. Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a Condominium Unit by its identifying unit number, followed by the words, "Cement Creek Duplex" with further reference to the recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only 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 throughout the General Common Elements appurtenant thereto to the exclusion of all third parties not lawfully entitled to use the same.

7. Separate Assessment and Taxation-Notice to Assessor. Declarant shall give written notice to the assessor of Gunnison County, Colorado, of the creation of the condominium ownership of this property, as is provided by law, so that each Condominium Unit shall be deemed a separate parcel and subject to separate assessments and taxation.

8. Title. A Condominium Unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of Colorado.

9. Nonpartitionability of General Common Elements. The General Common Elements shall be owned in common by all of the Owners of the Condominium Units and shall remain undivided, and no Owner shall bring any action for partition or division of the General Common Elements. Nothing contained herein shall be construed as a limitation of the right of partition of a

Condominium Unit between the Owners thereof, but such partition shall not affect any other Condominium Unit.

10. Use of General and Limited Common Elements. Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner may use the General Common Elements in accordance with the provisions of this Declaration, without hindering or encroaching upon the lawful rights of the other Owners.

11. Use and Occupancy. The Units in the project shall be used for residential purposes only.

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

13. Termination of Mechanic's Lien Rights and Indemnifications. 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 Owner thereof or his agent or his contractor or subcontractor shall be a basis for filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against the General Common Elements owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any Owner or against the General Common Elements for construction performed or for labor, materials, services or other products incorporated in or otherwise attributable to the Owner's Unit at such Owner's request.

14. Administration and Management. The operation and management of the Condominium Property shall be undertaken by a managing agent, who shall be the Declarant or its designated agent or successor.

15. Reservation for Access-Maintenance, Repair and Emergencies. The Managing Agent shall have the irrevocable right to have access to each Condominium Unit from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the General Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Condominium Unit or Units.

Damage to the interior of any part of a Unit resulting from 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 Managing Agent shall be a Common Expense of both Owners; provided, however, that if such damage is the result of the negligence of the Unit Owner, then such Unit Owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

16. Owners' Maintenance Responsibility of Unit. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the windows, doors, interior non-supporting walls, the material (such as, but not limited to

plaster, gypsum drywall, paneling wallpaper, brick, stone, paint wall and floor tile, and flooring, but not including the subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit and the Unit doors and windows. The Owner shall not be deemed to own any utilities running through his Unit which serve more than one Unit except as a tenant in common with the other Owners. Such right to repair, alter and remodel shall carry the obligation to replace any finishing materials removed with similar or other types or kinds of finishing materials of equal or better quality.

An Owner shall maintain and keep the interior of his own Unit in good taste and repair, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Unit shall be maintained and kept in repair by the Owner thereof.

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

17. Compliance with Provisions of Declaration. Each Owner shall comply strictly with the provisions of this Declaration. Failure so to comply shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Managing Agent on behalf of the Owners or, in a proper case, by an aggrieved Owner.

18. Revocation or Amendment to Declaration. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the Owners of a majority of the Units, or more, and all of the holders of any recorded Mortgage or deed of trust covering or affecting any or all Condominium Units consent and agree to such revocation or amendment by instrument(s) duly recorded; however, the fractional undivided interest in the General Common Elements appurtenant to each condominium Unit, as defined and designated by this Declaration, shall have a permanent character and shall not be altered without the consent of all of the Condominium Unit Owners as expressed in a duly recorded amendment to this Declaration.

19. Assessment for Common Expenses. All Owners shall be obligated to pay the estimated assessments imposed by the Managing Agent to meet the Common Expenses. Except for insurance premiums, the assessments shall be made pro rata according to each Owner's fractional interest in and to the General Common Elements. Assessments for insurance premiums shall be based upon that proportion of the total premiums that the insurance carried on a Condominium Unit bears to total coverage. Assessments for the estimated Common Expenses, including insurance, shall be due monthly in advance on the first day of each month. The Managing Agent shall prepare and deliver or mail to each Owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments are made. Contribution for monthly assessments shall be prorated if the ownership of a Condominium Unit commences on a day other than the first day of a month.

The assessment made upon the Owners shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent shall from time to time determine is to be paid by all of the condominium Unit Owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements. Said sum may include, among other things, without limitation, the following: Expenses of management; taxes and special assessments until separately 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 Condominium Units; casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting and heating; repairs and renovations; garbage collections; wages; water charged; legal and accounting fees; management fees; expenses and liabilities incurred by the Managing Agent or the Declarant under or by reason of this Declaration; the payment of any deficit remaining from a previous 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 Managing Agent to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

20. Insurance. The Managing Agent 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 buildings, fixtures, equipment and personal property similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Managing Agent as the attorney-in-fact for the Condominium Unit Owners, which policy or policies shall identify the interest of each Condominium Unit Owner (Owner's name, unit number, the appurtenant undivided interest in the General Common Elements), and which shall provide for a standard, noncontributory mortgage clause in favor of each first Mortgagee, and shall further provide that it cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice to each first Mortgagee. The Managing Agent shall, upon request of any first Mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the Mortgagee.

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 with 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 periodically 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 appraisals.

Insurance coverage on the furnishings, additions and improvements incorporated into a Unit and all items of personal property belonging to an Owner and casualty and public liability insurance coverage within each individual Unit shall be the responsibility of the Owner thereof.

21. Owners' Personal Obligation for Payment of Assessments.

The amount of the Common Expenses assessed against each Condominium Unit shall be the personal and individual debt of the Owner thereof. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same. 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.

22. Lien for Nonpayment of Common Expenses. All sums assessed but unpaid for the share of Common Expenses chargeable to any Condominium Unit, including interest thereon at eighteen percent per annum, or at such other rate of interest fixed by the Managing Agent, or majority of Owners of Units, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances except:

(a) Tax and special assessment liens on the Unit in favor of any taxing entity; and

(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, including additional advances, refinance or extension of these obligations made thereon prior to the arising of such a lien.

To evidence such lien the Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner or reputed Owner of the Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed by the Managing Agent and may be recorded in the office of the Clerk and Recorder of the County of Gunnison, State of Colorado. Such a lien for the Common Expenses shall attach from the date of the failure of payment of the assessment, and may be enforced by the foreclosure on the defaulting Owner's Condominium Unit by the Managing Agent in like manner as a mortgage or deed of trust on real property upon recording of a notice or claim thereof. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim or lien and all reasonable attorney's fees. The Owner shall also be required to pay a reasonable rental for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Managing Agent shall have the power to bid in the Condominium Unit at foreclosure sale and shall have the power to acquire and hold, lease, mortgage and convey the same.

The amount of the Common Expenses assessed against each Condominium Unit shall also be a debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a Condominium Unit may pay any unpaid Common Expense 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 rank as the lien of his encumbrance.

23. Liability for Common Expense upon Transfer of Condominium Unit. Upon payment of a reasonable fee and upon the written request of any Owner or any Mortgagee or prospective Mortgagee of a Condominium Unit, the Managing Agent shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date such assessment becomes due, credit for advance payments or for prepaid items, including, but not limited to insurance premiums, which should be conclusive upon the Managing Agent in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness is complied with within ten days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

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-five dollars, and upon written request, any prospective grantee shall be entitled to a written statement from the Managing Agent setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessments and the date that such assessment becomes due, credit for advance payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Managing Agent. Unless such request for a statement of indebtedness shall be complied with within ten 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 assessment against the subject Unit.

24. Mortgaging a Condominium Unit - Priority. 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 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: (1) Any mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other obligations created by the Declaration; (2) 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 said premises which insurance policies were effected and placed upon the mortgaged premises by the Managing Agent. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Managing Agent.

25. Right of First Refusal by Owners. In the event any Owner of a Condominium Unit other than the Declarant shall desire to sell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, including an offer from another Owner, the selling or leasing Owner shall give written notice thereof to the remaining Owners together with a copy of such offer and the terms thereof. The remaining Owners, individually or collectively, shall have the right to purchase or lease the subject Unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, or his agent, together with a matching down payment or deposit during the twenty day period immediately following the receipt of the notice of the offer to purchase or lease. The right of first refusal herein provided shall not apply to leases or subleases having a term of less than three months, nor to leases to share a Unit with the Owner thereof.

In the event two or more remaining Owners shall have given their notice to the selling or leasing Owner as provided above, the determination of who among the competing Owners shall have the right to purchase or lease the Unit shall be made as follows: The selling Owner shall notify all Owners who submitted their notice of election to purchase or lease and provided the downpayment or deposit as required hereinabove, to submit sealed bids to the Managing Agent within twenty days from the receipt of such notice. The Managing Agent shall open all such bids upon the thirtieth day following the day the selling Owner mailed said notice to the competing Owners and the Owner submitting the bid offering the highest purchase price or rental for the subject Unit shall have the right to purchase or lease the same.

In the event any Owner shall attempt to sell or lease his Condominium Unit without affording to the other Owners the right of first refusal herein provided, such sale or lease shall be voidable and may be voided by a certificate of non-compliance of the Managing Agent duly recorded in the office of the Clerk and Recorder of Gunnison County, Colorado.

However, in the event the Managing Agent has not recorded such a certificate of non-compliance within one year from the date of recording in the case of a deed delivered in violation of this paragraph and within one year from the date of possession under a lease executed in violation of this paragraph, such a conveyance shall be conclusively deemed to have been made in compliance with this paragraph and no longer voidable.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the Owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his Condominium Unit to a trust deed, mortgage or security instrument.

The failure or refusal by the Owners to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an Owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

The right of first refusal as provided herein, shall extend and run for the life of Norman E. Klein and his living decendants and the survivor of them, plus Twenty-five years.

Except as is otherwise provided in Paragraph 26, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each grantor of a Condominium Unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

26. Exemption from Right of First Refusal. In the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Paragraph 25, and the purchaser, or grantee under such deed in lieu of foreclosure of such Condominium Unit shall thereupon and thereafter be subject to the provisions of this Declaration and the Bylaws of any Association of Unit Owners. If the purchaser following such foreclosure sale, or grantee under deed given in lieu of such foreclosure, shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the Condominium Unit free and clear of the provisions of Paragraph 25, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The following transfers are also exempt from the provisions of paragraph 25:

- (a) Transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s);
- (b) Transfer of a deceased's interest to a devisee or devisees by will or his heirs at law under intestacy laws;

(c) Transfer of an Owner's interest by treasurer's deed pursuant to a sale for delinquent taxes;

(d) Transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or to a person or persons becoming partners; a transfer of all or part of the partner's or partners' interest between one or more partners and/or to persons becoming partners;

(e) Transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution. A transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least fifty percent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the Condominium Unit;

(f) Transfer of a Unit wherein the document of conveyance transferring the same shall set forth evidences that it was executed by the Managing Agent and in compliance with Paragraph 25 hereof;

(g) Transfer by gift;

(h) Transfer by Declarant herein.

If the Owner of a Condominium Unit can establish to the satisfaction of the Managing Agent that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Paragraph 25.

27. Certificate of Compliance - Right of First Refusal.

Upon written request of any prospective transferee, purchaser, tenant or any existing or prospective Mortgagee of any Condominium Unit, the Managing Agent shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing:

(a) With respect to a proposed lease or sale under Paragraph 25 that proper notice was given by the selling or leasing Owner that the remaining Owners did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a first Mortgagee or its nominee in lieu of foreclosure, and a deed from such first Mortgagee or its nominee, pursuant to Paragraph 26, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 25.

Such certificate shall be conclusive evidence of the facts contained herein.

28. Attorney-In-Fact in Case of Destruction, Repair, Obsolescence and Condemnation. This Declaration hereby makes mandatory the irrevocable appointment of an Attorney-In-Fact to deal with the property upon its destruction, repair, obsolescence or condemnation.

Title to any Condominium Unit is declared and expressly made subject to the terms and conditions thereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the Attorney-In-Fact herein provided. All of the Owners irrevocably constitute and appoint during the lives of the persons named in Paragraph 25 hereof, plus 25 years or the Managing Agent then appointed and acting in accordance with Paragraph 14 hereof, their true and lawful attorney in their name, place and stead for the purpose of dealing with the property upon its destruction, obsolescence,

condemnation or repair as hereafter provided. Said Attorney-In-Fact shall have full and complete authorization, right and power to make, execute and deliver any contracts, 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 subparagraphs means restoring the 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. The proceeds of any insurance collected shall be available to the Attorney-In-Fact for the purpose of repair, restoration or replacements unless the Owners of a majority of the Condominium Units and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) 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 Attorney-In-Fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Attorney-In-Fact shall have full authority, right and power, as Attorney-In-Fact, to cause the repair and restoration of the improvements.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than one Unit destroyed or seriously damaged, such destruction or damage shall be promptly repaired and reconstructed by the Attorney-In-Fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Such deficiency assessments shall be a common expense and made pro rata according to each Owner's fractional interest in the General Common Elements, and shall be due and payable within thirty days after written notice thereof. The Attorney-In-Fact shall have the authority 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 upon his Condominium Unit may be enforced and collected as is provided in Paragraph 22. In addition thereto, the Attorney-In-Fact shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Attorney-In-Fact. The proceeds claimed from the sale of such Condominium Unit shall be used and disbursed by the Managing Agent as Attorney-In-Fact, in the following order:

- (1) For payment of the balance of the lien of any first mortgage;
- (2) For payment of taxes and special assessment liens in favor of any assessing entity;
- (3) For payment of unpaid Common Expenses;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority;
- (5) The balance remaining, if any shall be paid to the Condominium Unit Owners.

(c) If more than one Unit is destroyed or seriously damaged, and if the Owners of a majority of Units, or more, do not voluntarily, within one year thereafter make provision for reconstruction, which plan must have the

unanimous approval or consent of every first Mortgagee, the Attorney-In-Fact shall forthwith record a notice setting forth such fact or facts, and upon the recording of such a notice by the Attorney-In-Fact, the entire remaining premises shall be sold by the Attorney-In-Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the Bylaws. The insurance settlement proceeds shall be collected by the Attorney-In-Fact and such proceeds shall be divided by the Attorney-In-Fact according to each Unit Owner's interest (as such interest appears on the policy or policies), and such divided proceeds shall be paid into a separate account representing each Condominium Unit. Each such account shall be in the name of the Attorney-In-Fact, and shall be further identified by the Unit Number and the name of the Owner. From each separate account, the Attorney-In-Fact, shall use and disburse the total amount of each such funds without contribution from one account to the other, toward the partial or full payment of the lien of any first Mortgage against the Condominium Unit represented by such separate account. There shall be added to each account the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each Condominium Unit Owner's fractional 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 Attorney-In-Fact for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of this paragraph.

If the Owners of a majority of Units, or more, adopt a plan for reconstruction, which plan has the unanimous approval of all first Mortgagees, then all of the Owners shall be bound by the terms and other provisions of such plan. Any assessments made in connection with such plan shall be a Common Expense and made pro rata according to each Owner's fractional interest in the General Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Attorney-In-Fact shall have the authority 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 condominium Unit and may be enforced and collected as is provided in Paragraph 22.

In addition thereto, the 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 Attorney-In-Fact shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Attorney-In-Fact for the same purpose and in the same order as provided in subparagraph (b)(1) through (5) of this paragraph.

(d) Owners of a majority or more Units may agree that the Condominium Units are obsolete and that the same should be renewed or reconstructed. In such instance, then the expenses thereof shall be payable by all of the Owners as Common Expenses.

(e) Owners of a majority or more Units may agree that the Condominium Units are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every first Mortgagee. In such instance, the Attorney-In-Fact shall forthwith record a notice setting

forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Attorney-In-Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the Bylaws. The sales proceeds shall be apportioned among the Owners on the basis of each Owner's fractional interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts representing each Condominium Unit. Each such account shall be in the name of the Attorney-In-Fact, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Attorney-In-Fact shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of this paragraph.

(f) 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 property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply:

(1) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter call the "Condemnation Award" shall be payable to the Attorney-In-Fact.

(2) Complete Taking. In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium Ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the basis of each Owner's fractional interest in the General Common Elements, provided that if a standard different from the value of the property 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 principal set forth in the last preceding paragraph, the Attorney-In-Fact 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 subparagraph (e) of this paragraph.

(3) 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 Attorney-In-Fact 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 General Common Elements shall be apportioned among the Owners on the basis of each Owner's fractional interest in the General 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 Attorney-In-Fact determines to be equitable in the circumstances. If an allocation of the Condemnation Awarded is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Attorney-In-Fact shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in subparagraph (e) of this paragraph.

(4) Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in this paragraph.

29. Personal Property for Common Use. The Managing Agent may acquire and hold for the use of and benefit of all of the Condominium Owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the Condominium Owners in the same proportion as their respective interests in the General Common Elements and shall not be transferable except with a transfer of a Condominium Unit. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereof. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the others Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Condominium Unit.

30. Appointment and Responsibilities of Managing Agent. The Managing Agent shall be appointed in the manner described herein and shall assume and carry out the responsibilities herein specified:

(a) The Managing Agent shall be a person, firm or corporation designated and appointed from time to time by the Owners of a majority of the Condominium Units, who shall deliver their written notice of appointment of said Managing Agent, which notice shall specify the powers, duties and responsibilities of said Managing Agent for the day to day operation of the project, and upon such appointment such Managing Agent shall be and become the Managing Agent for, and shall have the power to bind, all of the Owners of all of the Condominium Units in the project with respect to matters within the scope of this Declaration, until such time as the authority of the Managing Agent shall be appointed by similar written notice signed by the Owners of a majority of the Condominium Units in the project, and delivered to the said Managing Agent.

(b) The authority and responsibility for the management of the project shall be vested in and exercised by a Managing Agent appointed pursuant to this Paragraph 30. The written notices of appointment of the Managing Agent by the Owners of the Units hereunder shall be placed of record by the Manager insofar as required by law or practice. Until changed by the Owners of a majority of the Condominium Units, the initial Managing Agent of the Project shall be the Declarant.

(c) Notwithstanding any provision to the contrary in these Declarations, so long as the Declarant retains ownership of fifty percent (50%) or more of the units, the Declarant shall have the right but shall not be compelled to be the Managing Agent of the project with full control over the management thereof.

31. Mailing of Notices. Each Owner shall register his mailing address with the Managing Agent and all notices of any kind given pursuant to this Declaration intended to be served upon any Owner shall be sent by certified mail, return receipt requested, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association and Managing Agent shall be given by certified mail, return receipt requested, postage prepaid, to the address thereof. All notices or demands to be served on Mortgagees pursuant hereto, shall be sent by certified mail, return receipt requested, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Managing Agent in writing. Unless the Mortgagee so furnished such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section. No notice of any kind shall be effective unless such notice conforms to the requirements of this paragraph.

32. Arbitration Required for any Claim Hereunder. Except as otherwise herein provided, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

33. Period of Condominium Ownership. The separate condominium estates created by the Declaration and the Map shall continue until this Declaration is revoked in the manner and is provided in Paragraph 18 of this Declaration or until terminated in the manner and as is provided in subparagraphs (c), (e) and (f) of Paragraph 28 of this Declaration.

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

(b) The provisions of this declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado and to all other provisions of law.

(c) Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

35. Attorney's Fees. It is agreed that if any action is brought in a court of law by any party to this Declaration as to the enforcement or interpretation or construction or arbitration of this Declaration or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecuting or defense of such action. Additionally, all expenses incurred including reasonable attorney's fees, incurred in collecting delinquent assessments shall be paid by the defaulting Owner.

36. Binding Agreement. The provisions of this Declaration, and all subsequent agreements and determinations lawfully made by the Managing Agent or Attorney-In-Fact, shall be binding upon all Owners of Units, their representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, this Declaration has been duly executed this 3rd day of July, 1991.

Norman E. Klein
Norman E. Klein

Mary Louise Klein
Mary Louise Klein

W.S. Henrion
W.S. Henrion

STATE OF COLORADO)
COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me this 3rd day of July, 1991, by Norman E. Klein and Mary Louise Klein.

Witness my hand and official seal.

My commission expires: May 15, 1994



M. Louise Bybee
Notary Public

STATE OF TEXAS)
COUNTY OF Travis) ss.

The foregoing instrument was acknowledged before me this 19th day of July, 1991, by W. S. Henrion.

Witness my hand and official seal.

My commission expires:

Connie Myott
Notary Public

