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CONDOMINIUM DECLARATION  
FOR  
AVON TOWN SQUARE COMMERCIAL CONDOMINIUMS  
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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR**

**AVON TOWN SQUARE COMMERCIAL CONDOMINIUMS**

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION is made by A.T.S. Joint Venture (the Declarant) pursuant to the Colorado Common Interest Ownership Act (the Act) as it exists on the date of execution and recording hereof. Any subsequent amendments to the Act, to the extent they are required to apply to existing Declarations shall be deemed applicable hereto. The Condominium Project is located entirely within Eagle County, Colorado. This Amended and Restated Declaration shall supersede the Declaration recorded January 26, 1994 in Book 630, Page 824 of the records of Eagle County, Colorado, Reception No. 526883.

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**SUBMISSION TO CONDOMINIUM OWNERSHIP**

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

Lot 1, Avon Town Square Subdivision According to the Amended Final Plat thereof, Eagle County, Colorado, including all appurtenant rights and obligations pursuant to that certain Cross Easement recorded January 26, 1994 at Reception No. 526855, of Eagle County, Colorado.

**ARTICLE I**

**DEFINITIONS**

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

Section 2. "ASSOCIATION OF UNIT OWNERS" or "ASSOCIATION" means the Avon Town Square Commercial Condominium Association, Inc., a

Colorado non-profit corporation, the Articles of Incorporation, By-Laws and Rules of which shall govern the administration of this condominium project.

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

Section 4. "BUILDING" shall mean the individual building in which the Units are located as shown on the Condominium Map. The Declarant or the Association may, by written agreement, designate a name for the building other than "Avon Town Square." The Association shall be bound by the terms of any such agreement entered into by the Developer.

Section 5. "CONDOMINIUM UNIT" shall mean an individual Unit together with the undivided interest in the Common Elements appurtenant to such Unit.

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

Section 7. "COMMON EXPENSE LIABILITY" means the liability for common expenses allocated to each Unit.

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

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

Section 10. "DEVELOPMENT RIGHTS" means those rights reserved to the Declarant to add real estate; to create units, common elements or limited common elements; and/or to subdivide or combine units or convert units into common elements on the property to be added, if any.

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

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

Section 13. "LIMITED COMMON ELEMENTS" shall mean and refer to any portion of the Common Elements designated in this Declaration

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or the Map as reserved for exclusive use by the owner or owners of a particular Condominium Unit or Condominium Units. Limited Common Elements reserved for the use of more than one Unit may also be referred to as "Multiple Unit Limited Common Elements."

Section 14. "CONDOMINIUM MAP" shall mean and include the survey of the land locating thereon all of the improvements, the floor and elevation plans depicting the Condominium Units and any amendments or supplements thereto.

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

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

Section 17. "PARKING SPACE" shall mean a space located on the Common Elements to be used for parking one motor vehicle.

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

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

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

## ARTICLE II

### DESCRIPTION OF CONDOMINIUM UNITS

Section 1. CONDOMINIUM MAP. A Condominium Map shall be filed for record prior to the final conveyance of the first Condominium Unit. The Condominium Map shall consist of and set forth (1) the legal description of the surface of the Property; (2) the linear measurement and location of the Building, with reference to the

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exterior boundaries of the Property; (3) floor plans and elevation plans of the interior of the Building, including the Units, showing the location, designation and the linear dimensions of each Unit, the structural and supporting walls, the common walls between Units, or if no such common walls exist, the perimeter boundaries of the Unit, the location of any structural or supporting components within Units, the designation of the Limited Common Elements, and any other information required by the Act. In interpreting the Map, the existing boundaries of each Unit as constructed or in respect of a combination or separation of Units, then as so modified, shall be conclusively presumed to be its boundaries. Declarant reserve the right to amend the Map, from time to time, to conform the same to the actual physical location of the constructed improvements and to any changes, modifications or alterations.

Section 2. DIVISION OF PROPERTY INTO CONDOMINIUM UNITS. The real property and improvements constructed thereon may be divided into a maximum of forty (40) fee simple estates, each such estate consisting of one Unit together with the appurtenant undivided percentage interest in the Common Elements specified on the attached Exhibit A, which by this reference is made a part hereof. Title to the Common Elements shall be held by the Owners as tenants-in-common. Each Condominium Unit shall be identified on the Map by the numerical designation shown on Exhibit A.

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

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combination of Units or separation of combined Units shall be performed unless the plans therefor have been submitted to the Association, which shall have the authority to require the posting reasonable security to ensure completion of such improvements, and such plans have been approved by all governmental authorities having jurisdiction thereof.

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

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

Condominium Unit \_\_\_\_\_, Avon Town Square Condominiums, according to the Condominium Map appearing in the records of the Clerk and Recorder of the County of Eagle, Colorado in Book \_\_\_\_\_ at Page \_\_\_\_\_, Reception No. \_\_\_\_\_, as defined and described in the Condominium Declaration for AVON TOWN SQUARE CONDOMINIUMS, appearing in such records in Book \_\_\_\_\_ at Page \_\_\_\_\_, Reception No. \_\_\_\_\_

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

Section 5. SEPARATE ASSESSMENT AND TAXATION NOTICE TO ASSESSOR. Declarant shall give written notice to the Assessor of the County of Eagle, Colorado, of the condominium ownership of this Property, as is provided by law, so that each Unit and its percentage of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation.

Section 6. TITLE. A Condominium Unit may be held and owned by one or more persons, firms, corporations, partnerships,

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associations or other legal entity, in any real property tenancy relationship recognized under the laws of the State of Colorado.

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

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

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**ARTICLE III**

**OWNERS' PROPERTY RIGHTS**

Section 1. SINGLE UNIT LIMITED COMMON ELEMENTS. Subject to the provisions of this Declaration, each Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to his Unit. Such Limited Common Elements are as follows: interior corridors shall be used exclusively by the Owners of the respective Units which such corridors serve. Any other Limited Common Elements described herein and as shown on the Condominium Map shall be appurtenant to the Units so designated on the Condominium Map. No reference to such Limited Common Elements need be made in any deed, deed of trust, instrument of conveyance or other instrument concerning a Condominium Unit; and any such deed, deed of trust, instrument of conveyance, or other instrument concerning a Condominium Unit shall be deemed to convey the right to the exclusive use of such Limited Common Elements without reference thereto.

Section 2. MULTIPLE UNIT LIMITED COMMON ELEMENTS. Specified portions of the Common Elements may be designated on the Map as Multiple Unit Limited Common Elements. The portions of the Common Elements so designated shall be reserved for the limited use of the owners of the Units to which such Common Elements may be appurtenant, their employees, invitees and guests. Multiple Unit Limited Common Elements may include, but are not necessarily limited to reception areas, restrooms or conference rooms, located

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on a specified floor, or separate utility or mechanical components used by or accessible to some, but less than all of the Units.

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

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

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

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

#### ARTICLE IV

##### EASEMENTS

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

Section 2. BLANKET EASEMENTS. There is hereby created a blanket easement upon, across, over and under all of the General Common Elements for pedestrian and vehicular ingress and egress to and from the Building and Units, provided the same is confined to walks, ways, drives, courtyards and roadways designed for such purposes, and for the installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone and electricity. An easement is granted

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to all police, fire protection and ambulance personnel, and all similar persons to enter upon the General Common Elements and Units in the performance of their lawful duties. An Easement is granted to the Association to enter in, onto, above, across or under the Common Elements and any Unit to perform the duties of maintenance and repair to any Unit or the Common Elements.

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

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

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

#### ARTICLE V

#### THE ASSOCIATION

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

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

Within thirty (30) days after the adoption of any proposed budget, the Association's Board shall mail by ordinary first class mail, or otherwise deliver, a summary of the budget to all unit owners and the Board shall set a date for a meeting of the owners to consider ratification of the budget. The meeting shall be

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held not less than fourteen (14) nor more than sixty (60) days after mailing or delivery of the summary. Unless sixty percent (60%) of the owners reject the budget, it shall be deemed ratified, regardless of whether a quorum of owners is present. In the event of a rejection of the budget the periodic budget last ratified shall remain in force until such time as a subsequent budget is proposed and ratified as provided for herein.

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

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

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

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

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

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

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

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

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

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

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conservation, maintenance, and enjoyment of the Common Elements, and the regulation of parking.

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

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

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

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

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

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

Members shall be all the Owners, including the Declarant, and shall be entitled to the number of votes specified on Exhibit A attached hereto. Ownership interests or use of common elements shall not be included in the computation of voting rights. Where Condominium Units are owned by more than one Owner then one such person shall be designated as the voting member in respect of such Unit, by a written instrument delivered to the Secretary of the Association. In the absence of such designation, the Board may disallow the votes cast by such Owner. When the same person owns more than one Condominium Unit, the Owner shall be entitled to the requisite number of votes on Association matters for each Condominium Unit owned. The votes of any Owner not a natural person may be cast by any designated representative of such Owner which designation shall be in writing and delivered to the Board prior to any such vote. In the absence of such designation, the Board may disallow the votes cast by such Owner.

#### ARTICLE VI

#### MAINTENANCE

Section 1. OWNERS' RESPONSIBILITY OF MAINTENANCE. Each Owner shall be responsible for maintenance, repair, alteration and remodeling of the windows, doors, interior nonsupporting walls, the materials (such as, but not limited to, plaster, gypsum dry walls,

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paneling, wallpaper, brick, stone, paint, wall and floor tile and flooring, but not including the subflooring) making up the finished surfaces of his Unit. All fixtures and equipment installed within the Unit commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Unit shall be maintained and kept in repair by the Owner thereof. Such right to repair, alter and remodel shall 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 do no act nor any work within his Unit that will impair the structural soundness or integrity of any Building or impair any easement or hereditament. Each Owner shall further be solely responsible for the maintenance and repair of any portion of the Limited Common Elements appurtenant solely to such Owner's Unit, but if such Limited Common Elements are appurtenant to more than one Unit, then maintenance and repair thereof shall be performed by the Association. The Units and the Limited Common Elements appurtenant thereto shall be kept in a clean and sanitary condition at all times.

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

#### ARTICLE VII

##### USE AND OTHER RESTRICTIONS

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

Section 2. PARKING SPACES. Each Owner is entitled to the right to use, in common with other owners, visitors and guests the parking spaces which are part of the Common Elements or available by easement, subject to Rules adopted by the Association.

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Section 3. USE AND OCCUPANCY.

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

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

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

(d) No noxious or offensive activity nor any activity which would materially increase insurance rates shall be carried on in or upon the Common Elements or in the Units.

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

(f) Any rental of a Condominium Unit shall be pursuant to a written lease, a copy of which shall be furnished the Association prior to its effective date.

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

ARTICLE VIII

ASSESSMENTS

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

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date of the transfer of title to such Condominium Unit by Declarant to a purchaser thereof.

Section 2. USE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the acquisition, construction, management, maintenance and care of the Common Elements, and for the performance of all other duties and obligations of the Association pursuant to this Declaration, including but not limited to the following: the provision of services and facilities related to the use and enjoyment of the Common Elements; the provision of gas, electricity, water and sewage disposal to the Units to the extent the same is not separately metered or charged to the Units as hereinafter set forth; maintenance, repair and replacement of utilities; paving and lighting walkways, and other facilities; snow removal; grounds upkeep; sprinkler system repair and maintenance; landscaping; garbage pickup; administration expenses; rental and acquisition of real or personal property; establishment and maintenance of a cash reserve and a sinking fund for all of the foregoing purposes, including but not limited to an adequate reserve fund for the acquisition, construction, maintenance, replacement and repair of those portions of the Common Elements which must be replaced on a periodic basis; and such other and further expenses as the Association, in its opinion, shall determine to be necessary and desirable.

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

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reasonable reserve. The Board of Directors shall furnish a summary or a copy of such proposed budget to each Owner, as provided in Article V, Section 1(a) and, upon request, to any Mortgagee. Based on such budget, and the required ratification thereof, the Board of Directors shall determine the amount of the Annual Assessments for each Condominium Unit for such fiscal period as provided in Section 7 of this Article VIII.

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

Section 5. EXTRAORDINARY ASSESSMENTS. In the event the Association shall maintain or repair any Unit pursuant to Article VI, Section 2, or advance any funds as a result of an Owner's failure to perform any duty to be performed by such Owner hereunder, the Association may make an Extraordinary Assessment against such Unit and the Owner thereof, to recover the actual amounts expended by the Association in making, or causing to be made, such repair and/or in maintaining such Unit, or performing such duty plus an amount, to be determined by the Board, not to exceed twenty-five (25%) per cent of the total amount thereof to cover overhead and administrative costs of the Association. The Association may also make an Extraordinary Assessment against an Owner and his Condominium Unit to recover any amounts paid by Association for which an Extraordinary Assessment or fine or charge may be levied as provided in this Declaration or in the By-Laws or Rules of the Association. Extraordinary Assessments levied against one or more, but less than all of the Units shall not be deemed to be periodic assessments and no ratification shall be required.

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

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special meeting thereof called for the purpose of considering such Special Assessment.

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

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

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

(a) Tax and special assessment liens in favor of any assessing authority; and

(b) All sums unpaid on any First Mortgage of record, including all unpaid sums as may be provided for by such encumbrance, and including additional advances made thereon prior to the filing of such lien.

To evidence such lien, the Board of Directors or managing agent may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such notice shall be signed by one of the Board of Directors or by the managing agent or by counsel for the Association and shall be recorded in the Office of the Clerk and Recorder of Eagle County, State of Colorado. Such lien shall attach from the date the unpaid assessment was made, and may be enforced by foreclosure on the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property and shall encumber all rents and profits issuing from the Condominium Unit. In any such foreclosure, the Owner shall be obligated to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and the reasonable attorneys' and receiver fees of the Association which shall be recoverable out of the foreclosure proceeds. The Owner shall also be required to pay the Association a reasonable rental for the Condominium Unit during the period of redemption, which payment shall be covered by the lien, and the Association shall be entitled to a receiver to collect the

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same. The Association shall have the power to bid on the Condominium Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same. Nothing herein shall be deemed to limit or diminish any statutory lien for assessments, costs, damages or attorneys fees, to which the Association is otherwise entitled.

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

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

Section 11. LIABILITY FOR COMMON EXPENSES UPON TRANSFER OF CONDOMINIUM UNIT. Notwithstanding the personal obligation of each Owner of a Condominium Unit to pay all assessments thereon and notwithstanding the Association's perpetual lien upon a Condominium Unit for such assessments, all successors in interest to the fee simple title of a Condominium Unit shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees against such Condominium Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor; provided, however, that a successor in interest to the fee simple title of a Condominium Unit shall be entitled to rely upon the existence and status, or absence thereof, of unpaid assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest as hereinafter set forth. Upon the written request of any owner or any mortgagee or prospective mortgagee or grantee of a Condominium Unit, and upon the payment of a reasonable fee not to

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exceed Fifty Dollars (\$50.00), the Association, by its managing agent or Board of Directors, shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to the subject Condominium Unit, the amount of the current monthly assessment and the date such assessment becomes due, and the amount of credit for advanced or for prepaid items which statement shall be conclusive upon the Association in favor of all persons who rely thereupon in good faith. Unless such request for a statement of indebtedness is complied with within twenty (20) days, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the interest of the person making such request.

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

#### ARTICLE IX

#### INSURANCE

Section 1. BLANKET POLICY. The managing agent or Board of Directors shall obtain and maintain at all times fire insurance and extended coverage and vandalism and malicious mischief insurance issued in an amount of the full insurable replacement cost, less applicable deductibles, from time to time, of the Common Elements, including the Units and fixtures initially installed therein by Declarant (but excluding furniture, furnishings and other personal property supplied by an Owner), and including all such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Association as the insured, which policy or policies shall include the standard, non-contributory mortgagee clause, and shall further provide that it cannot be cancelled, materially altered or allowed to lapse except upon ten days' prior written notice to each Owner and First Mortgagee. The managing agent or Board of Directors shall, upon request of any First Mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor.

All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach

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of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. In the event that an Owner's use of or improvement to a Unit increases the cost of premiums for insurance, the Association may levy an Extraordinary Assessment against such Owner's Unit to pay such increased cost. No Owner shall obtain insurance which shall impair the Association's ability to insure or realize on insurance policies obtained by the Association. Any diminution in proceeds received by the Association resulting from such other insurance shall be a charge upon such Owner's Condominium Unit and an Extraordinary Assessment levied therefor.

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

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

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

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

(d) All insurance shall comply with the requirements of the Colorado Common Interest Ownership Act.

Section 3. INSURANCE PROCEEDS SUBORDINATE TO MORTGAGE. In the event of substantial damage to, or destruction of the major portion of the Common Elements, and if the Common Elements are not restored, any distribution of insurance proceeds hereunder shall be made, pro rata, to the Owners and their respective Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the holder of a mortgage on a Condominium

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Unit with respect to any such distribution; provided, however, that nothing in this Section 3 shall be construed to deny the Association the right to apply any or such proceeds to repair or replace damaged portions of the Common Elements. The Association shall notify the appropriate holders of Mortgages whenever damage to the Unit exceeds \$5,000 or the damage to the Common Elements affecting any single Unit exceeds \$15,000.

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

#### ARTICLE X

#### DAMAGE AND DESTRUCTION, OBSOLESCENCE, CONDEMNATION

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

Section 2. DAMAGE AND DESTRUCTION. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair and reconstruction or replacement unless under the conditions set forth

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in subparagraph (b) below, the specified percentage of Owners and Mortgagees fail to approve repair, reconstruction or replacement.

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

(b) If destruction or damage is sustained to more than sixty per cent (60%) of the replacement value of the Condominium Units, and if the Owners representing an aggregate ownership interest of seventy-five per cent (75%) or more of the total number of Condominium Units and the Mortgagees of all Condominium Units determine not to rebuild the improvement, the Condominium Units 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 By-Laws. The insurance settlement proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into a separate account in the name of the Association, and shall be further identified by the alphabetic designation of the Unit and the name of the Owner. There shall be added to each such account the apportioned amount of the proceeds derived from the sale of the Building. Such apportionment shall be based upon each Condominium Unit Owner's Assessment Ratio. The total funds of each account shall be used and disbursed, without contribution from one account to another by the Association, as attorney-in-fact in the following order:

- (1) For payment of taxes and special assessment liens in favor of any assessing entity;
- (2) For payment of the balance of the lien of any Mortgagee;
- (3) For payment of unpaid Common Expenses;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

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(5) The balance remaining, if any, shall be paid to the Condominium Unit Owner.

Section 3. OBSOLESCENCE.

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

(b) Any time subsequent to the expiration of twenty-five (25) years from the date of the recording of this Condominium Declaration, Owners representing an aggregate ownership interest of seventy-five per cent (75%) or more of the Condominium Units may agree that the Condominium Units are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every Mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, all of the Condominium Units shall be sold by the Association, as attorney-in-fact for all the Owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's Assessment Ratio, and such apportioned proceeds shall be paid into separate accounts representing each Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the alphabetic designation of the Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (b)(5) of Section 2 of this Article X.

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

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

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

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

## ARTICLE XI

### MORTGAGEE'S RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE XII**

**REVOCATION OR AMENDMENT TO DECLARATION**

AMENDMENTS AND REVOCATION. This Declaration shall not be revoked nor shall any of the provisions herein be amended, except as permitted under the Act, or unless Owners representing an aggregate ownership interest of sixty-seven per cent (67%) or more of the Condominium Units consent and agree to such amendment or revocation. No such amendment or revocation shall impair the rights of any First Mortgagee unless the Mortgagee whose rights may be affected consents in writing after due notice.

**ARTICLE XIII**

**PERSONAL PROPERTY FOR COMMON USE**

Prior to the first conveyance of any Condominium Unit, Declarant shall execute and deliver a bill of sale to the Association, transferring all items of personal property located on the Property furnished by the Declarant, if any, which property is intended for the common use and enjoyment of any or all of the Condominium Unit Owners and occupants. No Owner shall have any other interest and right thereto and all such right and interest shall absolutely terminate upon the Owner's termination of possession or ownership of his Condominium Unit.

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ARTICLE XIV

RESERVATIONS OF DEVELOPMENT AND SPECIAL RIGHTS OF DECLARANT

ADDITIONS. Additional Condominium Units may be added to the condominium project established by this Declaration by the execution by the Declarant or the Board of Directors and filing of record of a "Supplement to Declaration of Condominium," reciting that (i) this Declaration is supplemented by adding thereto additional Condominium Units to be embraced in and to be brought into the condominium project herein established, and (ii) that the provisions of this Declaration and additional terms and conditions as set forth therein shall govern such additional Condominium Units recited in the Amendment. No consent of the Owners to such Supplement shall be required. No addition to the condominium project shall diminish an Owner's undivided interest in the Owner's Condominium Unit or the Common Elements. The property which may be added hereto is described as Lot 2, a Resubdivision of Lot 1, Block 1, The Lodge at Avon Subdivision, according to the recorded Plats thereof in Eagle County, Colorado, and any structures thereon. Any election to add said property shall be exercised as to all of said additional property.

Additions to the condominium project shall be divided into Condominium Units. The undivided interest in the Common Elements appurtenant to each additional Unit shall not include an interest in the Common Elements already created by this Declaration; provided, however, that all Owners of Condominium Units subject to this Declaration or any Supplement thereto shall have a non-exclusive right in common with all of the other Owners to use of the sidewalks, pathways, driveways, and all other Common Elements then or thereafter, subject to the Declaration that are not specifically dedicated to the use of less than all of the Owners. This easement shall be irrevocable, shall be for the purposes of egress and ingress, and shall apply to all property hereafter committed to the condominium project.

Except as may be provided otherwise by the provisions of such a Supplement to this Declaration, all of the provisions contained in this Declaration shall be applicable to additional Condominium Units submitted to this condominium project. The Owner of an additional Condominium Unit shall have the number of votes designated for such Unit in the Supplement to the Declaration. The voting rights of Owners of Condominium Units in previously committed property will be diminished in proportion to the number of Condominium Units in the additional property.

As additional Condominium Units are submitted to this condominium project and in order that the expenses pertaining to the Common Elements be shared proportionately and equitably by the Owners of the initially submitted Condominium Units and the Owners of all subsequently submitted additional Condominium Units, such

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expenses shall be apportioned among the total number of Condominium Units subject to this Declaration and all Supplements thereto in accordance with each such Condominium Unit's Assessment Ratio.

The election by Declarant to add property to this project shall be exercised, if at all, within ten (10) years after the date of the recording of this Declaration. Any additions shall be in conformance with and subject to the terms of the Act.

SALES OFFICE. Declarant reserves the right to own and maintain one or more Units, and to operate at least one such Unit as a sales office until at least seventy-five percent (75%) of the Units have been sold.

Declarant reserves the right to be and remain an owner of one or more units and to sell, lease, rent, assign or otherwise transfer any or all of said Units. Nothing herein shall preclude the Declarant from leasing one or more Units to the Association for use as a management office. Nothing herein shall preclude Declarant or its designee from serving as managing agent for the project based upon a management agreement entered into with the Association. No management agreement entered into between Declarant or its designee shall be void or voidable solely because of the fact that at the time of execution of such contract Declarant owned more than 50% of the Units or that Declarant or an employee of Declarant was a member of the Association Board. Nothing herein shall preclude termination of a contract with Declarant as authorized by law.

#### ARTICLE XV

##### GENERAL

Section 1. NOTICES. Except as otherwise allowed by law or by this Declaration, all notices or demands intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of such Owner in care of the Unit number and building address of such Owner, or at such other address as an Owner notifies the Association of from time to time. All notices, demands or other notices intended to be served upon the managing agent or the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to P.O. Box 18420, Avon, Colorado, 81620, or such other address as may be given from time to time. All notices, demands or other notices shall be deemed given upon deposit in the United States mails, as hereinabove specified.

Section 2. PERIOD OF CONDOMINIUM OWNERSHIP. The separate condominium estates created by this Declaration, and the map, shall continue until this Declaration is revoked in the manner provided herein, or terminated by operation of law.

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Section 3. ACCEPTANCE OF PROVISIONS OF ALL DOCUMENTS. The conveyance or encumbrance of a Condominium Unit shall be deemed to include the acceptance of all of the provisions of this Condominium Declaration, the Articles of Incorporation, the By-Laws and Rules and Regulations of the Association, and shall be binding upon each grantee or encumbrancer, its successors and assigns without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance.

Section 4. DECLARANT' RIGHTS ASSIGNABLE. The rights of Declarant hereunder may be assigned by Declarant voluntarily or by operation of law.

Section 5. INTERPRETATION.

(a) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance 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 supplemented by the Colorado Common Interest Ownership Act. In the event of any inconsistency between the Act or other law, this Declaration shall control to the extent allowed by law; otherwise, the statutory provision shall be deemed controlling and incorporated herein.

(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 will include all genders.

**ARTICLE XVI**

**SALES OF UNITS**

Section 1. SALES. No unit owner may sell his unit or any interest therein except by complying with the provisions of this section. A unit owner's sale of his unit shall include the sale of (a) the undivided interest in the common elements appurtenant thereto; (b) the interest of such unit owner in any units theretofore acquired by the Board, or its designee, on behalf of all unit owners, or the proceeds of the sale thereof, if any; and (c) the interest of such unit owner in any other assets of the condominium, hereinafter collectively called the appurtenant interests.

Any unit owner who receives a bona fide offer for the sale of his unit, hereinafter called an outside offer, which he



intends to accept, shall give notice to the Board and all other owners of such offer and of such intention, the name and address of the proposed purchaser, the terms of the proposed transaction and such other information as the Board may reasonably require, and shall offer to sell such unit to the Board or its designee, corporate or otherwise, on behalf of the owners of all other units, or to any other owner, on the same terms and conditions as contained in such outside offer. The giving of such notice shall constitute a warranty and representation by the unit owner who has received such offer, to the Board and other owners, that such unit owner believes the outside offer to be bona fide in all respects. Within 30 days after receipt of such notice, the Board or other unit owners may elect, by notice to such unit owner, to purchase such unit on the same terms and conditions as contained in the outside offer and as stated in the notice from the unit owner. The first acceptance of the offer to purchase shall have prior right to close the transaction. Any subsequent acceptance shall be deemed a "back up" acceptance. In the event the Board or other unit owner shall elect to purchase such unit, the sale shall close 45 days after the giving of notice by the Board or other owner of its election to accept such offer. At the closing, the unit owner shall convey the same by general warranty deed. The costs of sale and transfer and the expenses that are usually prorated at closing shall be paid for and adjusted in the usual manner as in any other purchase and sale of real estate in Colorado. In the event of a failure to accept such offer within 30 days, the unit owner shall be free to contract to sell such unit to the outside offeror within 60 days after the expiration of the period in which the Board or other unit owner might have accepted such offer, on the terms and conditions set forth in the notice from the unit owner to the Board of such outside offer. Any deed to an outside offeror shall provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. In the event the offering unit owner shall not, within such 60 day period, contract to sell such unit to the outside offeror on the terms and conditions contained in the outside offer, or if such a contract is entered into but not fulfilled, then the unit owner shall be required to again comply with all of the terms and provisions of this section in order to sell the unit.

Any purported sale of a unit in violation of this section shall be voidable at the election of the Board or any unit owner.

Section 2. CONSENT OF UNIT OWNERS TO PURCHASE BY BOARD. The Board shall not exercise any option hereinabove set forth to purchase any unit without the prior approval of a majority of the unit owners.

Section 3. NO SEVERANCE OF OWNERSHIP. No unit owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his unit without including therein the

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appurtenant interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant interests of any unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the unit to which such interests are appurtenant, or as part of a sale, transfer, or other disposition of such part of the appurtenant interests of all units.

Section 4. RELEASE BY BOARD OF RIGHT OF FIRST REFUSAL. Upon presentation of exceptional circumstances, the right of first refusal contained in Section 1 of this Article XVI may be released or waived in writing (setting forth the exceptional circumstances) by the Board, in which event the unit may be sold or conveyed free and clear of the provisions of such Section.

Section 5. CERTIFICATE OF TERMINATION OF RIGHT OF FIRST REFUSAL. A certificate, executed and acknowledged by the Secretary of the Association, stating that the provisions of Section 1 of this Article XVI have been met by a unit owner, or have been duly waived by the Board, and that the rights of the Board thereunder have terminated, shall be conclusive upon the Board and the unit owners in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any unit owner who has in fact complied with the provisions of Section 1 of this Article XVI or in respect to whom the provisions of such Section have been waived, upon request, at a reasonable fee, not to exceed \$25.00.

Section 6. FINANCING OF PURCHASE OF UNITS BY BOARD. Acquisition of units by the Board, or its designee, on behalf of all unit owners, may be made from the working capital and common charges in the hands of the Board, or if such funds are insufficient, the Board may levy an assessment against each unit owner in proportion to his ownership in the common elements, as a common charge, which assessment shall be enforceable in the same manner as provided in Section 9 of Article VIII. Alternatively, the Board may borrow money to finance the acquisition of such unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the unit so to be acquired by the Board.

Section 7. EXCEPTIONS. The provisions of Section 1 of this Article XVI shall not apply with respect to any sale or conveyance by a unit owner of his unit to his spouse or to any of his children or to his parent or parents or to his brothers or sisters, or any one or more of them, or to the acquisition or sale of a unit by a mortgagee herein authorized who shall acquire title to such unit by foreclosure or by deed in lieu of foreclosure. However, the provisions of such Section shall apply with respect to any

purchaser of such unit from such mortgagee. The provisions of Section 1 of this Article XIV shall not apply to the Declarant as to any Unit sold or offered for sale by Declarant for the first time, or to any Unit owned by the Declarant after the expiration of five (5) years from the date of recording of this Declaration.

Section 8. GIFTS AND DEVISES, ETC. Any unit owner shall be free to convey or transfer his unit by gift, or to devise his unit by will, or to pass the same by intestacy, without restriction.

Section 9. WAIVER OF RIGHT OF PARTITION WITH RESPECT TO UNITS ACQUIRED BY BOARD. In the event that a unit shall be acquired by the Board, or its designee, on behalf of all unit owners as tenants in common, all such unit owners shall be deemed to have waived all rights of partition with respect to such unit.

Section 10. PAYMENT OF ASSESSMENTS. No unit owner shall be permitted to convey, mortgage, pledge, hypothecate, sell, or lease his unit unless and until he shall have paid in full to the Board all unpaid common charges theretofore assessed by the Board against his unit and until he shall have satisfied all unpaid liens against such unit, except permitted mortgages.

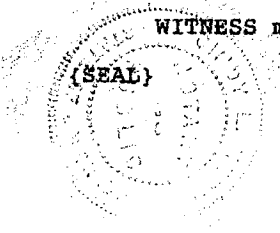
IN WITNESS WHEREOF, the undersigned, as Declarant, has duly executed this Amended and Restated Declaration this 9th day of August, 1994.

A.T.S. JOINT VENTURE, Declarant  
W.D.C., INC., Managing Joint Venturer  
By Alfred H. Williams  
Alfred H. Williams, President  
of W.D.C., Inc.

STATE OF COLORADO )  
 ) S  
COUNTY OF )

The foregoing instrument was acknowledged before me this 9th day of August, 1994 by Alfred H. Williams, as President of W.D.C., Inc., Managing Joint Venturer of A.T.S. Joint Venture.

WITNESS my hand and seal.



Cindy S. Heer  
Notary Public  
My Commission  
Expires 1-24-95

0012

EXHIBIT A  
 AVON TOWN SQUARE COMMERCIAL CONDOMINIUM DECLARATION

LEVEL	Unit #	SQUARE FEET	PERCENT INTEREST & ASSESSMENT RATIOS		MULTIPLE UNIT LIMITED COMMON ELEMENT ASSESSMENT RATIOS	ASSOCIATION VOTING - NUMBER OF VOTES PERCENT	
			THE COMMON ELEMENTS				
LEVEL ONE	101	689.09	3.80%			3.5	
	102	1,139.50	5.80%			5.8	
	103	1,164.78	5.92%			5.9	
	104	499.65	2.54%			2.5	
	105	495.65	2.52%			2.5	
	106	1,335.83	6.79%			6.8	
	107	2,047.16	10.41%			10.4	
		7,371.66	37.49%			37.5	37.49%
LEVEL TWO	200	226.32	1.15%		3.72%	1.2	
	201	558.42	2.84%		9.17%	2.8	
	202	566.84	2.88%		9.31%	2.9	
	203	429.34	2.18%		7.05%	2.2	
	204	705.92	3.59%		11.60%	3.6	
	207	505.56	2.57%		8.31%	2.6	
	209	205.35	1.04%		3.37%	1.0	
	210	308.39	1.57%		5.07%	1.6	
	212	312.24	1.59%		5.13%	1.6	
	214	187.77	0.95%		3.08%	1.0	
	215	229.71	1.17%		3.77%	1.2	
	216	1,184.81	6.03%		19.46%	6.0	
	220	337.11	1.71%		5.54%	1.7	
	222	329.34	1.67%		5.41%	1.7	
		6,087.12	30.96%	100.00%		31.0	30.96%
GARDEN LEVEL	G-1	613.20	3.12%			3.1	
	G-2	818.54	4.16%			4.2	
	G-3	965.73	4.91%			4.9	
	G-4	651.64	3.31%			3.3	
	G-5	953.50	4.85%			4.8	
	G-6	1,246.67	6.34%			6.3	
	G-7	565.52	2.88%			2.9	
		5,814.80	29.57%			29.6	29.57%
STORAGE (1)	GS-8	187.16	0.95%			1.0	
	GS-9	167.85	0.85%			0.9	
	GS-17	34.17	0.17%			0.2	
		389.18	1.98%			2.0	1.98%
Total		19,662.76	100.00%			100.0	100.00%

100128

(1) Storage units factored at 50% of square footage

**EXHIBIT B**  
**TO THE AMENDED AND RESTATED DECLARATION FOR AVON TOWN**  
**SQUARE COMMERCIAL CONDOMINIUMS**

This project is subject to the following recorded easements, rights of way, limitations, restrictions and reservations of record:

1. Reservations or exceptions contained in the U.S. Patents, or in Acts authorizing the issuance thereof, of record, reserving (1) Rights of the proprietor of a vein or lode to extract and remove his ore therefrom; and (2) rights of way for ditches and canals constructed under the authority of the United States.

2. Restrictions as contained in Warranty Deed from Benchmark at Beaver Creek, a limited partnership, to Tandora S.A. and Tancura S.A., recorded June 29, 1979 in Book 287 at Page 548 as Reception No. 183950.

NOTE: These restrictions affect property formerly described as Lot 60, Block 2, Benchmark at Beaver Creek Subdivision, Amendment No. 4, which comprises a portion of the subject property.

3. Restrictions and Protective Covenants, as contained in instruments recorded April 23, 1985 in Book 411 at Page 960 as Reception No. 308238, Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision, recorded February 7, 1990 in Book 522 at Page 721 as Reception No. 418888.

4. Easements and reservation as shown on the recorded plat of Avon Town Square recorded April 19, 1993 in Book 607 at Page 203 as Reception No. 503285, and the Amended Final Plat of Avon town Square, recorded January 26, 1994 in Book 630 at Page 795 as Reception No. 526854.

5. Terms, conditions, restrictions and reservations contained in Cross Easement by A.T.S. Joint Venture regarding Lot 1 and Lot 2, Avon Town Square Subdivision, recorded January 26, 1994 in Book 630 at Page 796 as Receptions No. 526855.

6. Terms, conditions, reservations, restrictions and obligations as contained in the Condominium Declaration for Avon Town Square Commercial Condominiums, recorded January 26, 1994 in Book 630 at Page 824 as reception No. 526883, or on the amended and restated declaration when recorded.

7. Easements, restrictions and rights of way as shown on the Preliminary Condominium Map of Lot 1, Avon Town Square Subdivision, recorded January 26, 1994 in book 630 at Page 825 as Reception No. 526884, or on the Final Condominium Map, when recorded.