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BOOK 237 PAGE 67A

CONDOMINIUM DECLARATION

FOR

NORTH OF HELL CONDOMINIUM

ASPEN, COLORADO

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CONDOMINIUM DECLARATION

FOR

NORTH OF NELL CONDOMINIUM

THIS DECLARATION, made and entered into by DALY CONSTRUCTION, INC., a Colorado corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property situate in the City of Aspen, County of Pitkin, State of Colorado, described as follows:

Parcel No. 1: Lots A, B, C, D, E, F, G, H and I, in Block 97, together with the West 8 feet of the Westerly one-half of South Hunter Street lying East of and adjacent to Lot I, Block 97 in the City and Townsite of Aspen;

Parcel No. 2: The North 10 feet of the East 15 feet of the Westerly one-half of South Hunter Street lying East of and adjacent to Lot I, Block 97, in the City and Townsite of Aspen;

Parcel No. 3: A non-exclusive right of way for ingress and egress over and across the Westerly one-half of vacated South Hunter Street lying Easterly and adjacent to Lot I, Block 97, except the portion thereof described above; and

WHEREAS, the Declarant has improved and is improving Parcel No. 1, of the aforesaid real property with a multi-story building in accordance with plans which are filed of record herewith and which plans constitute a map (hereinafter referred to as "Map") locating the condominium units under the provisions of Section 118-15-5, C.R.S.; and

WHEREAS, said multi-story building contains five levels, of which one level in the basement is devoted primarily to parking, one level on the ground or arcade floor is devoted primarily to commercial purposes, and three levels on the second, third and fourth floors are devoted to residential apartment units; and

WHEREAS, the Declarant desires to establish a condominium project and does hereby, by filing this Declaration, establish a plan under the Colorado Condominium Ownership Act, for the ownership in fee simple of real property estates consisting of the area or space contained in each of the air space units in said multi-story building and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property; and

WHEREAS, the Declarant desires to establish certain rights and easements in, over and upon said real property for the benefit of itself and all future owners of any part of said real property, and any air space unit or units thereof or therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the property and all air space units; and

WHEREAS, the Declarant desires and intends that the several unit owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property.

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 clearly indicates a different meaning therefor:

(a) "Declaration" means this instrument by which North of Nell Condominium is established.

(b) "Apartment" or "apartment unit" means an individual air space

unit on the second, third or fourth floor in the building which is contained within the perimeter walls, floors, ceilings, windows, and doors of such unit in the building as shown on the Map, together with all fixtures and improvements therein contained but not including any of the structural components of the building located in such unit.

(c) "Commercial unit" means an individual air space unit on the ground or arcade floor in the building which is contained within the perimeter walls, floors, ceilings, windows and doors of such unit in the building as shown on the Map, together with all fixtures and improvements therein contained but not including any of the structural components of the building located in such unit.

(d) "Unit" means a commercial unit or an apartment unit together with its undivided interest in the general common elements as is set forth on Exhibit "A" and the limited common elements appurtenant thereto.

(e) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof; whose estate or estates, or interest or interests, individually or collectively, aggregate fee simple ownership of one or more units.

(f) "Occupant" means any person or persons, other than the Owner, in possession of a unit.

(g) "Entire premises" or "property" means the hereinabove described real property, all improvements and structures constructed or contained therein, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and property intended for the mutual use, benefit or enjoyment of the unit owners.

(h) "Building" means the building improvement comprising a part of the property and containing the units.

(i) "Majority" or "majority of the unit owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the

general common elements. Any specified percentage of the unit owners, whether majority or otherwise, for purposes of voting and for all purposes and wherever provided in this Declaration, shall mean such percentage in the aggregate in interest of the undivided ownership of the general common elements.

(j) "General common elements" means and includes all portions of the property except the units, including but not limited to, the following:

(i) The foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, balconies, halls, corridors, lobbies, stairways, entrances, and driveways of the building;

(ii) The yards, gardens, laundry and locker rooms and automobile parking areas;

(iii) Any installations consisting of equipment and materials making up any central utility systems;

(iv) The elevator and, in general, all apparatus and installations existing for common use;

(v) All pipes, wires, ducts, flues, chutes, conduits, public utility lines (to the outlets) and structural components running through a unit and serving more than one unit or serving, or extending into, the general common elements, or any part thereof;

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

(k) "Limited common elements" means those parts of the general common elements which are reserved by the terms hereof for the exclusive use of the owner(s) of one or more, but less than all, units.

(l) "Common expenses" means and includes:

(1) Expenses declared common expenses by provisions of this Declaration and the By-Laws of the Association;

(2) Expenses of administration, operation and management, maintenance, repair, replacement or improvement of the general

common elements;

(3) All sums lawfully assessed against the general common elements by the Association; and

(4) Expenses agreed upon as common expenses by the members of the Association.

(m) "Association" means a Colorado corporation, not for profit, its successors and assigns, the Certificate of Incorporation and By-Laws of which shall govern the administration of this condominium property and the members of which shall be all of the owners of the units. The name of such corporation shall be North of Nell Condominium Association, Inc., or a similar name.

(n) "Board" means the Board of Managers of the Association.

2. Division of Property into Condominium Units. The real property hereinabove described is hereby divided into the following fee simple estates: Forty-two (42) separately designated apartment units and eight (8) separately designated commercial units and the undivided interest in and to the general common elements appurtenant to each unit as is set forth on Exhibit "A" attached hereto and, by this reference, made a part hereof.

3. Combination and division of Units.

(a) Declarant hereby reserves the right for itself, its successors and assigns, to physically combine the area or space of one apartment unit with the area or space of one or more adjoining apartment units, and the aggregate of the undivided interests in and to the general common elements appurtenant to such combined units shall be appurtenant to the one enlarged unit which shall result from such combination. In the event of such a combination, Declarant shall cause to be filed for record an amendment to Exhibit "A" and to the Map describing and depicting any such combination. Declarant hereby reserves the right for itself, its successors and assigns, to designate portions of the general common elements contained within the perimeter walls, floors, ceilings, windows and doors of any unit which shall result from a combination as aforesaid, as limited common elements reserved exclusively for use by the owners of such unit resulting from a combination and to convey

appurtenant interests therein to any such owners.

(b) The owner of any commercial unit shall have the right at any time to subdivide such commercial unit into any number of separate commercial units upon the filing for record of:

(i) A written statement, signed, and acknowledged by the owner making such subdivision, describing such subdivision and the number of separate commercial units into which such unit is being divided;

(ii) An amendment to Exhibit "A" setting forth the undivided interest in the general common elements which shall be appurtenant to each subdivided commercial unit; provided, however, that the total aggregate undivided interests in the general common elements appurtenant to all such commercial units after and resulting from the subdivision shall equal the undivided interest in the general common elements which was appurtenant to the subdivided single commercial unit prior to such subdivision; and

(iii) An amendment to the Map describing and depicting such subdivision and each commercial unit resulting therefrom.

Such documents shall each set forth the identifying number by which each such subdivided unit will thereafter be described, each such number to be different from the identifying number of all other units in the building.

4. Limited Common Elements.

(a) The balcony or balconies which adjoin an apartment unit and which are accessible therefrom, shall be a limited common element reserved exclusively for use by the owners of such unit, to the exclusion of all other owners, except by invitation.

(b) The locker rooms located on the second, third and fourth floors of the building, in which apartment units are located, shall be limited common elements reserved exclusively for use by the owners of all of the apartment units, to the exclusion of all owners of commercial units, except by invitation of the Association. The Board shall have the right, by rule or regulation, to number and assign to any apartment unit owner the exclusive privilege to use

any particular locker located in any such locker room and to post such signs with respect thereto as the Board deems appropriate. So long as there are forty-two (42) or more lockers in said locker rooms, no apartment unit owner shall be denied the use of at least one such locker.

5. Inseparability of a Condominium Unit. Each unit owner shall at all times be entitled to the percentage of ownership in the general common elements appurtenant to such unit as set forth in Exhibit "A". Each owner shall own such undivided interest in the general common elements as a tenant in common with all the other owners of the property. The percentages of ownership in the general common elements as set forth in Exhibit "A" shall, except as otherwise provided in Paragraph 3 hereinabove, remain constant unless thereafter changed by agreement of all of the owners. Each unit and the undivided interest in the general common elements appurtenant thereto shall together comprise one unit which shall be inseparable and may be conveyed, leased, devised or encumbered only as a unit.

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

7. Description of Condominium Unit. Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a unit by its identifying unit number and symbol followed by the words "North of Nell Condominium", with further reference to the Map thereof filed for record and the recorded Declaration. Every such description shall be deemed good and sufficient for all purposes, and shall be deemed to 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 and use of the general common elements together with the right to the exclusive

use of the appurtenant limited common elements.

8. Encroachments and Easements.

(a) In the event that by reason of the construction, reconstruction, settlement, or shifting of the building, or the design or construction of any unit, any part of the general common elements encroaches or shall hereafter encroach upon any part of any unit, or any part of any unit encroaches or shall hereafter encroach upon any part of the general common elements, or any portion of any unit encroaches upon any part of any other unit, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit and the general common elements so encroaching so long as all or any part of the building containing such unit and the general common elements so encroaching shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the general common elements if such encroachment occurred due to the willful conduct of said owner or owners. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or the units.

(b) Easements are hereby declared and granted for utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits, wires, and equipments over, under, along and on any part of the general common elements, as they exist on the date of the recording hereof.

(c) All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof.

(d) Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of

such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents; provided, however, that each such deed, mortgage, trust deed or other evidence of obligation shall be deemed to create and reserve such easements and rights as aforesaid notwithstanding the absence therein of any reference thereto.

9. Separate Assessment and Taxation - Notice to Assessor. Declarant shall give written notice to the assessor of the County of Pitkin, Colorado, of the creation of condominium ownership of this property, as is provided by law, so that each unit and the undivided interest in the general common elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation. In the event that for any period of time, any taxes, assessments or other charges of any taxing or assessing authority are not separately assessed to each unit owner, but are assessed on the property as a whole, then each unit owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the general common elements.

10. Title. A 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 the State of Colorado.

11. 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 and limited common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

12. Use and Occupancy.

(a) Each apartment unit shall be used and occupied solely for residential purposes by the owner, or by the owner's family, guests, invitees and tenants, subject to the provisions of this Declaration.

(b) Each commercial unit may be used and occupied for such business or commercial purpose or purposes as may be lawful and allowable under all applicable laws, ordinances or the rules of any lawful public authority.

(c) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designated for profit,

altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in or on any apartment unit. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the property except at such location and in such form as shall be approved by the Board or the managing employee. The right is reserved by the Declarant, or its agent or agents, to place "For Sale" or "For Rent" signs on any unsold or unoccupied units, and on any part of the general common elements, and the right is hereby given to any mortgagee, who may become the owner of any unit, to place such signs on any unit owned by such mortgagee. So long as any unit is owned by it, the Declarant shall be entitled to access, ingress and egress to the building and the property as it shall deem necessary in connection with the construction or sale of the building or any unit. The Declarant shall have the right to use any unsold unit or units as a model or for sales or display purposes.

(d) Each business or commercial establishment operated in a commercial unit, or any part thereof, shall be entitled to place one sign of reasonable size and in dignified manner containing the business name of such establishment upon the entrance door or windows of such establishment.

(e) There shall be no obstruction of the general common elements nor shall anything be stored in the general common elements without the prior consent of the Board except as herein expressly provided. The locker rooms referred to in Paragraph 4 may be used for the purpose intended, subject to the rules and regulations of the Board. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, dry-wall, panelling, wallpaper, paint, wall and floor tile and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceiling and floors within the unit. Each unit owner shall be obligated to maintain and keep his own unit, its windows and doors, and the balcony or balconies which may be a limited common element with respect to such unit, in good, clean order and repair. The use of and the covering of the interior surfaces of windows, whether by draperies, shades

or other items visible on the exterior of the building, shall be subject to the rules and regulations of the Board. Each owner shall keep the balcony or balconies which may be a limited common element with respect to such unit free and clear of snow, ice and any accumulation of water.

(f) Nothing shall be done or kept in any unit or in the general common elements which will increase the rate of insurance on the building, or contents thereof, (subject to the provisions of Paragraph 20 (g)(1) hereof) without the prior written consent of the Board. No owner shall permit anything to be done or kept in his unit or in the general common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the general common elements.

(g) Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board.

(h) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any unit or in the general common elements.

(i) No noxious or offensive activity shall be carried on in any unit or in the general common elements, nor shall anything be done therein, either wilfully or negligently, which may be or become an annoyance or nuisance to the other owners or occupants.

(j) Nothing shall be done in any unit or in, on or to the general common elements which will impair the structural integrity of the building or which would structurally change the building except as otherwise provided herein, nor shall anything be altered or constructed in or removed from the general common elements except as otherwise herein provided or otherwise permitted by the Board.

(k) The owner of any commercial unit shall be permitted to construct, improve, change, or alter such unit (and any portion of the general common elements contiguous to, and serving exclusively, such unit, if the same is not visible on the exterior of the building) in any manner, provided

that: (i) the structural integrity of the building will not thereby be impaired; (ii) such work will be done at the sole cost and expense of such owner and in full compliance with all applicable laws, ordinances and regulations; (iii) the boundaries of such unit, as shown on the Map, will not thereby be changed or altered; and (iv) such owner shall indemnify all other owners of units from any and all claims, liens, liabilities, suits or demands whatsoever relating to or arising out of such work (except insofar as any claim is waived and released as provided in sub-section (n) of this Paragraph 12).

(l) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the general common elements. The general common elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(m) There shall be no playing, lounging, parking of baby carriages, or playpens, bicycles, wagons, toys, vehicles, benches, chairs or other personal property on any part of the general common elements without the prior consent of, and subject to the regulations of, the Board.

(n) Each owner hereby waives and releases any and all claims which he may have against any other owner, the Association, the officers, and members of the Board, the Declarant and managing employee, and their respective officers, employees and agents, for damages to the general common elements, the units, or to any personal property located in the units or general common elements, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

(o) If, due to the act or neglect of an owner, or of a member of his family or of a guest, tenant, invitee, or other authorized occupant or visitor of such owner, damage shall be caused to the general common elements or to a unit or units owned by others, or to any boiler room, heating unit, pipes, ducts, apparatus or equipment referred to in Paragraph 20(j) hereof, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance.

(p) No owner shall overload the electric wiring in the building,

or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

13. Termination of Mechanic's Lien Rights and Indemnification. Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner or his agent or his contractor or subcontractor shall be the 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. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request or with his consent. The provisions herein contained are subject to the rights of the managing employee or Board as are set forth in Paragraph 15.

14. Administration and Management.

(a) The administration and management of this condominium property shall be governed by the Certificate of Incorporation and By-Laws of the Association. Each unit owner shall be a member of such corporation, which membership shall terminate upon the sale or other disposition by such member of his unit, at which time the new unit owner shall automatically become a member therein.

(b) The Certificate of Incorporation and By-Laws of the Association shall not contain any terms or provisions inconsistent with this Declaration and any such terms or provisions which may be inconsistent with this Declaration shall be null and void and of no effect.

(c) The Association shall be governed by its Board as is provided in the By-Laws of the Association. The Association shall have the power to

engage the services of a manager or managing employee, who may be any person, firm or corporation, upon such terms and compensation as the Board deems fit and to delegate to such manager or managing employee any of its duties, powers and functions. Any agreement with a manager or managing employee may provide for the leasing or care of the units.

(d) The Board shall consist of five persons who shall be elected in the manner provided in the By-Laws of the Association; provided, however, that at least two members of the Board shall at all times be elected by the owners of the commercial units by vote of the owners of more than 50% in the aggregate in interest of the undivided ownership of the general common elements owned by all of the owners of commercial units.

(e) If any unit is owned by more than one person, the voting rights with respect to such unit shall not be divided, but shall be exercised as if the unit owners consisted of only one person in accordance with the proxy or other designation made by the persons constituting such unit owner.

(f) The Board may, from time to time, adopt or amend such rules and regulations governing the operation, maintenance, beautification and use of the general common elements and the units, not inconsistent with the terms of this Declaration, as it sees fit, and the owners shall conform to, and abide by, such rules and regulations. Written notice of such rules and regulations shall be given to all owners. A violation of such rules or regulations shall be deemed a violation of the terms of this Declaration.

(g) The members of the Board and the officers thereof shall not be liable to the owners for any mistake of judgment, or any acts or omissions made in good faith as such members or officers. The owners shall indemnify and hold harmless each of such members or officers against all contractual liability to others arising out of contracts made by such members or officers on behalf of the owners unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any owner arising out of any contract made by such members or officers or out of the aforesaid indemnity shall be limited to such proportion of the

total liability thereunder as his percentage interest in the general common elements bears to the total percentage interest of all the owners in the general common elements. Each agreement made by such members or officers shall be executed by such members or officers, as agents for the Association.

(h) In the event of any dispute or disagreement between any owners relating to the property, or any question of interpretation or application of the provisions of the Declaration, the determination thereof by the Board shall be final and binding on each and all of such owners.

15. Reservation for Access - Maintenance, Repair and Emergencies.

The owners shall have the irrevocable right, to be exercised by the managing employee or Board, to have access to each unit from time to time during reasonable hours as may be necessary for the painting, maintenance, repair, reconstruction, 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 unit or units, or when such access is reasonably calculated to protect the health, safety or property of any owner or occupant.

Damages to the interior or any part of a unit or units resulting from the painting, maintenance, repair, emergency repair, reconstruction or replacement of any of the general common elements or as a result of emergency repairs within another unit at the instance of the Association shall be a common expense of all of the owners, subject, however, to the provisions of sub-paragraph (o) of Paragraph 12 hereof. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

Subject to the provisions of sub-paragraph (o) of Paragraph 12 hereof, and except as herein otherwise specifically provided, all maintenance, repairs, reconstruction and replacements as to the general common elements, whether located inside or outside of units, shall be the common expense of all of the owners.

16. Grantees. Each grantee of the Declarant, by the acceptance of a deed of conveyance, or each purchaser under Articles of Agreement for Deed, accepts the same subject to all terms, provisions, easements, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration and the Certificate of Incorporation and By-Laws of the Association, and the provisions of the Colorado Condominium Ownership Act, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

17. Parking. The basement level of the building shall be used for parking purposes and such other purposes for which it is intended and as may be prescribed by any rules or regulations at any time adopted by the Board; provided, however:

(a) There shall at all times be at least 69 parking spaces contained in such level;

(b) Each owner shall be entitled to park at least one car in such level;

(c) The Board shall have the right, by rule or regulation, to set apart no more than 42 parking spaces in such level for the exclusive use of the owners (and their guests, tenants, and invitees) of the apartment units and to post such signs with respect thereto as the Board deems appropriate but no owner shall have any responsibility or liability if a guest, tenant or invitee of such owner parks an automobile in a parking space contrary to any such rule or regulation; and

(d) The owners of units, and their guests, invitees and tenants (and the invitees of tenants) shall have equal rights at all times to use all parking spaces not set apart as hereinabove provided (and to have ingress and egress thereto and therefrom); except that the Board shall have the right, by rule or regulation, to prohibit the parking of automobiles by any invitee or guest of a tenant or owner of a commercial unit during any hours when such commercial unit is not open for its usual and customary business purposes.

18. Insurance.

(a) The Board, or the managing employee on behalf of the Board, shall obtain and maintain at all times:

(i) insurance for the property against loss or damage by fire and such other hazards as are covered under standard extended coverage, vandalism and malicious mischief, endorsements for the full insurable replacement cost of the general common elements and the units and such other casualty insurance as the Board deems advisable for the protection of the general common elements and the units. The insurance shall be carried in blanket policy form naming the Association the insured as either attorney-in-fact, or as trustee, for each of the owners in the percentages established in Exhibit "A" hereto. Each owner, other than the Declarant, shall notify the managing employee and the Board in writing of any additions, alterations or improvements to his unit and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure so to notify the managing employee and the Board. The Board or the managing employee shall use reasonable effort to obtain insurance on any such additions, alterations or improvements if such owner requests it to do so and if such owner shall make arrangements satisfactory to the managing employee and the Board to reimburse them for any additional premiums attributable thereto; and (in the absence of insurance on such additions, alterations or improvements, the Board shall not be obligated to apply any insurance proceeds to restore the affected unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. All such

policies of insurance shall insure additions, alterations or improvements made by the Declarant.) All such policies of insurance shall contain standard mortgage clause endorsements in favor of the mortgagee of each unit and that such policy shall not be terminated, cancelled or substantially modified without at least ten (10) days prior written notice to the mortgagee of each unit and to each owner.

(ii) Comprehensive public liability and property damage insurance in such limits as the Board shall deem desirable insuring the Association, the members of the Board, the managing employee, and their respective agents and employees, and the owners from any liability in connection with the general common elements.

(iii) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Board shall elect to effect.

(b) Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Board shall be common expenses.

(c) The Board may (but shall not be required to), in its sole discretion, secure insurance policies that will provide for one or more of the following:

(i) with respect to the insurance provided for in (a)(ii) of this sub-paragraph, for coverage of cross liability claims of one insured against another;

(ii) with respect to the insurance provided for in (a)(i) of this sub-paragraph, a waiver of subrogation by the insurer as to any claims against the managing employee, the owners and their respective agents, employees and guests;

(iii) with respect to the insurance provided for in (a)(i) of this sub-paragraph, that the policy cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual owners, or on account of the conduct of any officer or employee of the Association or managing employee without, in the latter case, a prior demand in writing that the Association or managing employee cure the defect;

(iv) with respect to the insurance provided for in (a)(1) of this sub-paragraph, that the insurer shall not have the option to restore the premises, if the property is sold as provided in Paragraph 25(c) hereof.

(v) with respect to the insurance provided for in (a)(1) of this sub-paragraph, that any "no other insurance" clause in such policy exclude policies of insurance maintained by any owner or his mortgagee from consideration and that no such insurance policy coverage under (a)(1) of this sub-paragraph be brought into contribution with insurance purchased by any owner or his mortgagee.

(d) Any owner may obtain additional insurance at his own expense; provided that:

(i) a copy of each such policy (except for a policy with coverage only as provided in (f) of this sub-paragraph) is furnished to the Board within thirty (30) days after it is purchased;

(ii) no such insurance may be maintained which would adversely affect or invalidate any insurance (or any recovery thereunder) carried by the Board or decrease the amount which the Board would realize under any insurance policy the Board is maintaining;

(iii) such insurance policy shall contain a waiver of subrogation in like manner as is provided for in (c)(ii) of this sub-paragraph.

(e) The Board may engage the services of any bank or trust company authorized to do business in Colorado to act as trustee or agent on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds under any policy provided for in (a)(1) of this sub-paragraph and resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of this Declaration. In the event of any loss resulting in the destruction of the major portion of one or more units, the Board shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or owner of any unit so destroyed. The fees of such corporate trustee shall be common expenses.

(f) Insurance coverage on the furnishings and other 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.

19. Additions, Alterations and Improvements of the General Common Elements. There shall be no alterations, additions to, or improvements on, the general common elements (other than for purposes of replacing or restoring portions thereof) requiring an expenditure in excess of Five Thousand Dollars without the prior approval of 66-2/3% of the owners.

20. Assessment for Common Expenses.

(a) All owners shall be obligated to pay the estimated assessments imposed by the Board. The limited common elements shall, except as is in this Declaration otherwise provided, be maintained as general common elements and the owners having exclusive use thereof shall not be subject to any special charges or assessments.

(b) The payment due for any month in connection with the assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of a month.

(c) The assessments made for common expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Board shall from time to time determine is to be paid by all of the condominium unit owners, 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, which sum may include, among other things, taxes and special assessments, until separately assessed; premiums for insurance; landscaping and care of grounds; common lighting and heating; repairs and renovations, trash collections; wages; water charges; legal and accounting fees; expenses and liabilities incurred by the managing employee or Board under or by reason of this Declaration; for any deficit remaining from a previous period; as well as other costs and expenses relating to the general common elements, and any cost or expense which is a common expense under the provisions of this Declaration.

The omission or failure of the Board of Managers to fix the assessment for any period shall not be deemed as a waiver, modification or a release of the owners

from their obligations to pay.

(d) At least once each year, the Board shall estimate the annual budget of common expenses (the "annual budget") including the total amount required for the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services in connection with the general common elements, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall notify each unit owner in writing as to the amount of such estimate with reasonable itemization thereof. Said annual budget shall be assessed to the unit owners according to each unit owner's percentage of ownership in the general common elements as set forth in Exhibit "A". On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each owner shall be obligated to pay to the Board, or to the managing employee, 1/12th of the assessment made pursuant to this paragraph. On or before the 1st day of February of each calendar year commencing 1970, the Board or managing employee shall supply to all unit owners an itemized accounting of the common expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner's percentage of ownership in the general common elements to the next monthly installments due from owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each unit owner's percentage of ownership in the general common elements to the installments due in the succeeding six months after rendering of the accounting. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which

may become necessary during the year, shall be charged first against such reserve. If said annual budget proves inadequate for any reason, including non-payment of any owner's regular or special assessment, the Board may at any time levy a further assessment, which shall be assessed to the unit owners according to each unit owner's percentage of ownership in the general common elements. The Board or managing employee shall serve notice of such further assessment on all unit owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All unit owners shall be obligated to pay the adjusted monthly amount.

(e) The failure or delay of the Board to prepare or serve the annual or adjusted budget on the owners shall not constitute a waiver or release in any manner of the owner's obligation to pay the maintenance and other costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, the owners shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period until the monthly assessment payment which is due more than ten (10) days after such new annual or adjusted budget shall have been mailed or delivered.

The Board or the managing employee shall keep full and correct books of account and the same shall be open for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the owner. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the unit owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held in trust for the benefit, use and account of all the owners in the percentages set forth in Exhibit "A".

(f) Until such time as the Board shall have served its first annual budget on the owners, or for such other period as the Board determines, the Board shall have the right to assess the common expenses, as hereinabove provided, on a monthly basis and all owners shall pay such monthly assessments as advised by the Board or managing employee.

(g) The following expenses or charges incurred by the Board shall be specially assessed to the individual owner to which such expense or charge is applicable (in addition to any other costs, charges or expenses which by law or the terms of this Declaration are payable by an individual owner):

(i) The amount by which any premium for insurance maintained by the Board is increased as a result of any business or other activity or act of such owner, or of any guest, invitee or tenant of such owner, or the amount of any premium on new insurance which is purchased by the Board solely as a result of any business or other activity or act of such owner, or of any guest, invitee or tenant of such owner. If such increased premium or new insurance premium is necessitated by the usual and customary business activity carried on in accordance with the terms of this Declaration in any commercial unit then, upon the payment of such amount by the owner of such commercial unit, such owner shall not be deemed in violation of the terms or provisions of this Declaration.

(ii) The monthly or other fee or compensation and any other cost or sum which the Board or Association is obligated to pay to the managing employee with respect to a unit under the terms of any agreement with such managing employee.

(h) In addition to the remedies or liens provided by law, or by this Declaration, if an owner is in default in the monthly payment of any aforesaid charge or assessment for thirty (30) days, the Board may bring suit for and on behalf of itself and as representative of all owners, to enforce collection thereof or to foreclose the lien therefor as provided by law or by

this Declaration; and there shall be added to the amount due the costs of said suit, together with interest at the rate of 7% per annum, from the due date thereof and reasonable attorney fees to be fixed by the Court. No owner may waive or otherwise escape liability for the assessments or other charges provided for hereby by non-user of the general common elements or abandonment of his or her unit.

(i). Assessments or other charges assessed against a unit shall be the personal and individual debt of the owner or owners thereof and such owners shall be jointly and severally liable therefor.

(j) (1) The boiler room and heating unit and equipment located in Commercial Unit 3, and all pipes and ducts, or other apparatus or equipment in connection therewith (to the extent to which the same are not part of the general common elements), shall be deemed owned in common (and, to the extent to which the same are part of the general common elements, they shall be limited common elements reserved exclusively for use) by the owners of Commercial Units 3 and 4, and by the owners of any commercial units which may result from a subdivision of said units or either of them pursuant to the terms of Paragraph 3 hereof, in the same proportions that the undivided interest in the general common elements appurtenant to each such unit bears to such undivided interest in the general common elements appurtenant to both or all of such units. The owners of all of such units shall have equal rights to the use of, and shall share in all costs of the maintenance, repair, replacement and reconstruction of such boiler room, heating unit, pipes, ducts, apparatus and equipment, and the fuel used in the operation thereof, in the same proportions as their ownership in common thereof.

(ii) The boiler room and heating unit and equipment located in Commercial Unit 6, and all pipes and ducts, or other apparatus or equipment in connection therewith (to the extent to which the same are not part of the general common elements), shall be deemed owned in common (and to the extent to which the same are part of the general common elements, they shall be limited common elements reserved exclusively for use) by the owners of Commercial Units 5A, 5B, 5C and (