

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) (i) 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 (

and by the owners of any commercial units which may result from a subdivision of said units or any 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 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.

(iii) In the event of any dispute or difference of opinion among the owners of the units referred to in this sub-paragraph (j) at any time, with respect to their rights or obligations under the terms of this sub-paragraph (j), the decision of the managing employee or of the Board if there be no managing employee, shall be final, conclusive and binding on all parties affected thereby. In the event any such owner shall fail or refuse to pay any sum which, in the opinion of the managing employee or Board, is due and payable under the terms of this sub-paragraph (j), then such sum shall become a lien on the unit of such owner which may be perfected and foreclosed or sued for in the manner provided in this Declaration with respect to liens for failure to pay a share of the common expenses. Any sums collected as a result of legal or other actions taken as a result of the refusal of an owner to pay as herein provided shall, after payment of all costs of collection thereof, be paid and applied for the purpose for which such sums were due and payable.

21. Lien for Non-Payment of Common Expenses and Other Obligations.

All sums assessed but unpaid for the share of common expenses chargeable to any unit and all sums specially assessed hereunder to any unit, but unpaid, and any and all other sums due to the Association and unpaid by a unit owner under the terms of this Declaration, shall constitute a lien on such unit

superior to all other liens and encumbrances, except only for:

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

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

To evidence such lien, the Board or managing employee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the unit and a description of the unit. Such a notice shall be signed by one of the Board or by the managing employee and shall be recorded in the office of the Clerk and Recorder of Pitkin County, Colorado. Such lien shall attach from the date of the failure of payment. Such lien may be enforced by foreclosure of the defaulting owner's unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure proceedings, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure, and the Association shall be entitled to a Receiver to collect the same. The Association shall have the power to bid in the unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage and convey same, or otherwise deal therewith.

Any encumbrancer holding a lien on a unit may pay, but shall not be required to pay, any unpaid common expenses or other assessments or charges payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

Upon written request of a mortgagee, the Association shall report to the mortgagee of a unit any unpaid assessments or other charges which could ripen into a lien remaining unpaid for longer than thirty days after the same are due; provided, however, that a mortgagee shall have first

furnished to the managing employee or to the Board, notice of such encumbrance.

22. Liability for Common Expense and Other Charges Upon Transfer of a Unit is Joint. Upon payment of a reasonable fee not to exceed Twenty-Five Dollars and upon the written request of any owner or any mortgagee or prospective mortgagee of a unit, the Association, by its managing employee or if there is none, then by the financial officer of the Association, shall issue a written statement setting forth the amount of the unpaid special assessments and common expenses, and other charges due hereunder, if any, with respect to the subject unit, the amount of the current monthly assessments and the date that such assessment becomes due, and credit for advanced payments of common assessments, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days after receipt thereof, all unpaid common expenses and other charges due hereunder which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses and for the special assessments and other charges due hereunder up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee not to exceed Twenty-Five Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the managing employee or the Association setting forth the amount of the unpaid assessments, and any other charges due hereunder, if any, with respect to the subject unit, the amount of the current monthly assessment, the date that such assessment becomes due, and credits for advanced payments, which statement shall be conclusive upon the Association. Unless such request for such a statement shall be complied with within ten days after receipt of such request, then such requesting grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for any unpaid assessments or other charges due hereunder against the

subject unit. The provisions contained in this paragraph shall not apply to the initial sales and conveyances of the units by Declarant, and such sales shall be free from any liens for common or special assessments to the date of conveyance thereof by Declarant.

23. Mortgaging a Condominium Unit - Priority. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a unit may create junior mortgages on the following conditions: (1) That any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other obligations created by this Declaration, the Certification of Incorporation and the By-Laws of the Association; (2) That the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of one or more of the members of the Board of Managers of the Association.

24. Sale or Leasing Right of First Refusal and Option.

(a) If any owner of an apartment unit, other than the Declarant, receives a bona fide offer for the sale of his apartment unit, or a bona fide offer for a lease of his apartment unit (or if the lessee of any apartment unit receives a bona fide offer for a sublease of such unit or for the assignment of his lease), which he intends to accept, he shall give notice to the Board of such offer and such intention, the name and address of such proposed purchaser, lessee, assignee or sublessee, the terms of the proposed transaction, and such other information as the Board may reasonably require. Said notice shall contain an executed copy of such offer. The giving of such notice shall constitute a warranty and representation by the giver

thereof that he believes such offer, and all information contained in such notice, to be bona fide, true and correct in all respects. During the period of thirty (30) days following receipt by the Board of such written notice, the Board shall have the first right at its option to purchase or lease such apartment unit on behalf of all other owners (or to cause the same to be purchased or leased by the designee or designees, corporate or otherwise, of the Board), on the same terms and conditions as stated in the aforesaid notice received by the Board. If the Board shall give written notice to the unit owner or lessor within said thirty (30) day period of its election to purchase or lease said apartment unit (or to cause the same to be purchased or leased by its designee, as aforesaid), and a matching offer or deposit is paid to the managing agent or any bank selected by the Board as escrowee for the benefit of the seller or lessor, then such purchase or lease by the Board or its designee shall be closed upon the same terms as such proposed sale or lease.

If the Board shall give written notice to the seller or lessor within said thirty (30) day period that it has elected not to exercise such option, or if the Board shall fail to give notice within said thirty (30) day period that it does or does not elect to purchase or lease as herein provided, then the proposed sale or lease transaction as described and set forth in the notice to the Board may be contracted for within sixty (60) days after the expiration of said thirty (30) day period. If the seller or lessor fails to contract for such sale or lease within such sixty (60) day period, or if he shall so contract but such sale or lease shall not be consummated pursuant to such contract, then such apartment unit and all rights with respect thereto shall again become subject to the Board's right of first refusal and option as herein provided.

(b) In the event any unit or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale), the person acquiring title through such sale shall, before taking possession of the unit so sold, give thirty (30) days written notice to the Board of his intention so

to do, whereupon the Board shall have an irrevocable option to purchase such unit or interest therein at the same price for which it was sold at said sale. If said option is not exercised by the Board within said thirty (30) days after receipt of such notice it shall thereupon expire and said purchaser may thereafter take possession of said unit. The Board shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser within said thirty (30) day period.

(c) If a proposed lease or sub-lease of any apartment unit is made after compliance with the foregoing provisions, a copy of the lease as and when executed shall be furnished by the lessor to the Board, and the lessee thereunder shall be bound by and be subject to all of the obligations of the owner with respect to such apartment unit as provided in this Declaration, and the lease shall expressly so provide. The owner making any such lease shall not be relieved thereby from any of his obligations. Upon the expiration or termination of such lease, or in the event of any attempted subleasing thereunder, the provisions hereof with respect to the Board's right of first refusal shall apply to such apartment unit.

(d) The terms of this Paragraph 24 and the right of first refusal herein provided for shall not be applicable to:

(i) the transfer or conveyance, by operation of law or otherwise, of the interest of a co-owner of any apartment unit to any other co-owner of the same unit, where such co-owners hold title to such unit as tenants in common or as joint tenants.

(ii) leases or sub-leases having a term of three calendar months or less, but any such lease or sub-lease shall not be renewable or extended except by compliance with the terms hereof.

(iii) the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws.

(iv) the transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business; a transfer of all or part of a partner's or partners' interests between one or more partners.

(v) the transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution; a transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least fifty per cent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the unit.

(vi) the transfer by gift.

(vii) the transfer, lease or sub-lease of a commercial unit, except as is provided in sub-paragraphs (b) and (g) of this Paragraph 24.

(viii) the execution of a bona fide trust deed, mortgage, or other security instruments.

Such persons, owners or grantees acquiring an interest shall be subject to all provisions of Paragraph 24 except as is provided herein.

(e) Where title to any unit is held by a corporation, or a partnership, the transfer of fifty per cent (50%) or more of the issued and outstanding shares of such corporation, or of fifty per cent (50%) or more of the interest in such partnership, shall be deemed a transfer of the unit owned by such corporation or partnership.

(f) In the event any owner other than the Declarant, or any lessee shall attempt to sell, lease or sub-lease his apartment unit without complying with the terms of this Paragraph 24, such sale, lease or sub-lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser, lessee or tenant who shall be subject to eviction and



removal, forcibly or otherwise, with or without process of law.

(g) The Board shall not exercise any option or right of first refusal hereinabove set forth to purchase any unit without the prior written consent of 66-2/3% of the owners. The Board or its duly authorized representatives may bid to purchase at any auction or sale of the unit or interest therein of any owner, deceased or living, which said sale is held pursuant to an order or direction of a court upon the prior written consent of 66-2/3% of the owners, which said consent shall set forth a maximum price which the Board is authorized to bid and pay for said unit or interest therein.

(h) Acquisitions or leasing of units or interests therein under the provisions of this Paragraph 24 shall be made from the funds of the Association. If said funds are insufficient, the Board shall levy a special assessment against each owner in the ratio that his percentage of ownership in the general common elements, as set forth in Exhibit "A", bears to the total of all such percentages applicable to units subject to said special assessment, which assessment shall become a lien and may be perfected and foreclosed in the manner provided in Paragraph 21 hereof with respect to liens for failure to pay a share of the common expenses. The Board, in its discretion, may borrow money to finance the acquisition of a unit or interest therein which said acquisition is authorized by this paragraph; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the property other than the unit or interest therein to be acquired.

(i) Units or interests therein acquired or leased by the Board pursuant to the terms of this Paragraph 24 shall be held of record in the name of the Association, for use and benefit of all the owners in the same proportions that the Board could levy a special assessment under the

terms of sub-paragraph (h) hereof. Said units or interests therein shall be sold or leased by the Board for the benefit of the owners upon such price and terms as the Board shall determine. All proceeds of such sale and/or leasing shall be deposited in the maintenance fund and may thereafter be disbursed at such time and in such manner as the Board shall determine.

(j) In the event of any default on the part of any owner under any first mortgage which entitles the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this Paragraph 24, and the purchaser (or grantee under such deed in lieu of foreclosure) of such unit shall be thereupon and thereafter subject to the provisions of this Declaration and the By-Laws of the Association. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the unit free and clear of the provisions of this Paragraph 24, but its grantee shall thereupon and thereafter be subject to all of the provisions hereof.

(k) Upon the written consent of all the members of the Board, any of the rights or options contained in this Paragraph 24 may be released or waived and the unit or interest therein which is subject to right of first refusal set forth in this paragraph may be sold, conveyed, or leased free and clear of the provisions of this paragraph.

(l) Upon the written request of any prospective transferor, purchaser, tenant or mortgagee of a unit, the managing employee or the Association, by its Secretary, shall issue a written and acknowledged certificate in recordable form, which certificate shall if so requested be contained on the face of any conveyance of such unit, evidencing that:

(1) with respect to a proposed sale or lease hereunder that the provisions of this Paragraph 24 have been complied with or duly waived by the Board and that the rights of first refusal of the

Board have been terminated, if such is the fact;

(ii) that any conveyance, deed or lease is, by the terms hereof, not subject to the provisions of this Paragraph 24, if such is the fact;

and such a certificate shall be conclusive evidence of the facts contained therein. The provisions of this sub-paragraph shall not apply to any sale, conveyance or lease of a unit by the Declarant.

(m) The failure of or refusal by the Board to exercise the right herein provided for to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner or lessee receives any subsequent bona fide offer from a prospective purchaser or tenant.

(n) The right of first refusal, as provided herein, shall extend and run for the period of the lives of THOMAS J. DALY, JUDITH DALY, and LYNDON B. JOHNSON, President of the United States, and their now living descendants, and the survivor of them, plus twenty-one years.

(o) Except as is otherwise provided in this Paragraph 24, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each and every conveyance by a grantor(s) of an apartment unit shall be, for all purposes, deemed to include and incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this Paragraph 24.

25. Association as Attorney-in-Fact, Damage, Destruction, Obsolescence and Sale. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

Title to any unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place

stead for the purpose of dealing with the property upon its destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an owner which are necessary and appropriate to exercise the powers herein granted. The term "improvements" means any improvements forming a part of the property, or any portion thereof, including any unit. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the same to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than fifty per cent of the square foot area of the building, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their units. Such deficiency assessment shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The

Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his unit may be enforced and collected as is provided in Paragraph 21. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order;

(1) For payment of taxes and special assessments liens in favor of any assessing entity and customary expenses of sale;

(2) For payment of the balance of the lien of any first mortgage;

(3) For payment of unpaid charges due hereunder and common expenses, including all sums due under the terms of this Paragraph 25;

(4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

(5) The balance remaining, if any, shall be paid to the unit owner.

(c) If more than fifty per cent of the square foot area of the building is destroyed or damaged, and if the owners representing an aggregate ownership interest of seventy-five per cent, or more, of the general common elements, do not voluntarily, within one hundred and eighty days (180) thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire

remaining premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each owner's percentage interest in the general common elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the units. Each such account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each unit owner's percentage interest in the general common elements. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount (of each) of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the unit represented by such separate account. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in sub-paragraph (b)(1) through (5) of this paragraph. The provisions contained in this sub-paragraph shall not hinder the protection given to a first mortgagee under a mortgage endorsement.

If the owners representing an aggregate ownership interest of seventy-five per cent, or more, of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty

days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his unit and may be enforced and collected as is provided in Paragraph 21. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in Paragraph (b)(1) through (5) of this paragraph.

(d) The owners representing an aggregate ownership interest of eighty-five per cent, or more, of the general common elements may agree that the units are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the unanimous approval of all first mortgagees. If a plan for the renewal or reconstruction is adopted, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such plan for renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. The Association shall then have fifteen days within which to cancel such plan. If such plan is not cancelled then the unit shall be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be

measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party), an appraiser who shall be a member of the Denver Board of Realtors. If either party fails to make such a nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another appraiser (to be selected from the Denver Board of Realtors). If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser (to be selected from the Denver Board of Realtors) to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two persons (each of whom shall be a member of the Denver Board of Realtors), and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owner. The same shall be consummated within fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in sub-paragraph (b)(1) through (5) of this paragraph.

(e) The owners representing an aggregate ownership interest of ninety per cent or more, of the general common elements may agree that the units are obsolete and that the property should be sold. Such agreement must have the unanimous approval of every first 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, the entire premises shall be sold by the Association, as



attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one unit. Each such account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this paragraph.

26. Acquisition of Property for Common Use. The Association may acquire and hold for the use and benefit of all of the owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the owners in the same proportion as their respective interests in the general common elements and shall not be transferable except with a transfer of a unit. A transfer of a unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. The transfer of title to a unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed unit.

27. Registration by Owner of Mailing Address. Each owner shall register his mailing address with the Association, and except for budget statements and other routine notices, all other notices or demands intended to be served upon an owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served

upon the Board of Managers of the Association or the Association shall be sent by certified mail, postage prepaid, to P. O. Box NN, Aspen, Colorado, until such address is changed by a notice of address change duly recorded in the office of the Clerk and Recorder, Pitkin County, Colorado.

28. 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 and as is provided in Paragraph 29 of this Declaration or until terminated in the manner and as is provided in subparagraphs (c) and (e) of Paragraph 25 of this Declaration.

29. Revocation. This Declaration shall not be revoked unless all of the owners and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all of the condominium units unanimously consent and agree to such revocation by instrument(s) duly recorded.

30. Compliance with Provisions of Declaration, By-Laws of the Association. Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the rules and regulations of the Association, as the same may be lawfully amended from time to time.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board (in the name of the Association on behalf of the owners) the right, in addition to any other rights provided for in this Declaration: (a) to enter upon the unit, or any portion of the property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) to recover sums due for damages.

Furthermore, if any owner (either by his own conduct or by the conduct of any other occupant of his unit) shall violate any of the covenants of this Declaration or the regulations adopted by the Board and such violation shall not be cured within thirty (30) days after notice in writing from the Board or shall re-occur more than once thereafter, then the Board shall have the power to issue to the defaulting unit owner a ten (10) day notice in writing to terminate the right of the said defaulting owner to continue as an owner and to continue to occupy, use or control his unit and thereupon an action in equity may be filed by the Board against the owner or occupants, or in the alternative a decree declaring the termination of the defaulting owner's right to occupy, use or control the unit owned by him on account of the breach of covenant and ordering that all the right, title and interest of the owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting owner from re-acquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting owner in said decree. Any balance of proceeds after satisfaction of such charges shall be applied and paid in the same order as is provided in sub-paragraph (b)(1) through (5) of Paragraph 25. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the unit and, subject to the Board's rights as provided in Paragraph 24(b) hereof, to immediate possession of the unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

31. Failure to Enforce. No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce same, no matter how many violations or breaches may occur.

32. Amendments. The provisions of Paragraphs 1, 2, 3, 4(a), 5, 6, 7, 8, 11, 12(a), 12(b), 12(d), 12(k), 14(b), 14(c), 14(d), 16, 17, 20, 21, 24 and this Paragraph 32 of this Declaration may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all of the owners and all mortgagees or holders of any deed of trust having bona fide liens of record against any units. The provisions of Paragraph 20(j) may be amended, changed or modified by an instrument in writing signed and acknowledged by the owners of all of the commercial units referred to in such Paragraph 20(j) and by all mortgagees or holders of any deed of trust having bona fide liens of record against all of such commercial units. Other provisions of this Declaration may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all of the members of the Board, at least 75% of the owners and by all mortgagees or holders of any deed of trust having bona fide liens of record against any units. Any amendment, change or modification shall conform to the provisions of the Colorado Condominium Ownership Act and shall be effective upon recordation thereof. No change, modification or amendment which affects the rights, privileges or obligations of the Declarant shall be effective without the prior written consent of the Declarant.

33. General.

(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. All of the terms hereof are hereby declared to be severable.

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

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

(d) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium development.

(e) If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only for the period of the lives of THOMAS J. DALY, JUDITH DALY and LYNDON B. JOHNSON, President of the United States, and their now living descendants, and the survivor of them, plus twenty-one years.

IN WITNESS WHEREOF, the Declarant, by its corporate officers, has duly executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_ 1968.

DALY CONSTRUCTION, INC.

By \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF COLORADO )  
                          ) SS  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 1968, by Thomas J. Daly, President and Judith  
Daly, Secretary of Daly Construction, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT "A"  
 TO  
 CONDOMINIUM DECLARATION  
 FOR  
 NORTH OF NELL CONDOMINIUM

UNIT NUMBER	APPURTENANT UNDIVIDED INTEREST (PERCENTAGE)
Commercial 1	4.31%
Commercial 2 2 B .75	5.15% 4.12
Commercial 3	2.99%
Commercial 4 4B - 1.19	2.63%
Commercial 5A	<del>1.78%</del> 1.92 PER R. STEVEN 9-16-69
Commercial 5B	<del>1.65%</del> 1.51
Commercial 5C	1.16%
Commercial 6	<del>1.15%</del> 18.32
2A	1.94%
2B	1.99%
2C	1.94%
2D	1.64%
2E	1.94%
2F	1.99%
2G	1.94%
2H	1.89%
2I	1.94%
2J	1.89%
2K	1.54%
2L	1.89%
2M	1.94%
2N	1.89%
3A	1.99%
3B	2.04%
3C	1.99%
3D	1.69%
3E	1.99%
3F	2.04%
3G	1.99%
3H	1.94%
3I	1.99%
3J	1.94%
3K	1.59%
3L	1.94%
3M	1.99%
3N	1.94%
4A	2.04%
4B	2.09%
4C	2.04%
4D	1.74%
4E	2.04%
4F	2.09%
4G	2.04%
4H	1.99%
4I	2.04%
4J	1.99%
4K	1.64%
4L	1.99%
4M	2.04%
4N	1.99%
	100.00%