

Filed for record the 5th day of December, 1984, at 3:45 o'clock PM Joanne M. Reitinger, Recorder  
 Reception No. 385162 CONDOMINIUM DECLARATION By *Jane Lilome* Deputy

FOR

POWDERVIEW AT THE GREENS, A CONDOMINIUM

THIS CONDOMINIUM DECLARATION is executed this 4th day of December, 1984, at Gunnison, Gunnison County, Colorado, by Sky Development, a Colorado general partnership.

RECITALS

A. Sky Development, a Colorado general partnership, hereinafter called "Declarant", is the owner of the real property situated in the County of Gunnison, State of Colorado, which property is described as follows:

Lot M-1, Skyland initial filing according to the official plat bearing Reception No. 363852, recorded November 17, 1981 of the Gunnison County records,

which description is hereinafter referred to as "the Property"; and

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

C. Declarant does hereby establish a plan for the ownership in fee simple of the real property estates consisting of the area or space contained in each of the air space units of the building improvements and the co-ownership by the individual and separate owners hereof, as tenants in common, of all of the remaining property, which property is hereinafter defined and referred to as the General Common Elements; and

D. This Condominium Declaration is executed to submit the property to condominium ownership pursuant to Article 33, Title 38, Colorado Revised Statutes, as amended, and referred to as the "Condominium Ownership Act"; and

E. Declarant is the owner of the property and intends to provide for condominium ownership of it; and

F. To accomplish this purpose, Declarant executes this Condominium Declaration to define the character, duration, rights, duties, obligations and limitations of condominium ownership in the project; and

G. Declarant hereby declares that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the project and shall be binding upon and accrue to the Declarant, its successors and assigns and any person acquiring and holding an interest in the project, its grantees, successors, heirs, personal representatives, or assigns.

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, his devisees or assigns.

DECLARATION

1. Definitions. Unless the context shall expressly provide otherwise:

- a. "Association" means Powderview at the Greens Homeowner's Association, a Colorado non-profit corporation, its successors and assigns, the Articles of Incorporation and the Bylaws of which govern the administration of the project.
- b. "Building" means any buildings constructed on the property.
- c. "Common Elements" means all of the project except the units.
- d. "Common Expenses" means and includes:
- (i) Expenses declared common expenses by provisions of this Condominium Declaration.
  - (ii) Expenses of administration, operation and management, professional fees including, but not limited to, legal and accounting fees, maintenance, repair or replacement of the common elements.
  - (iii) All sums lawfully assessed with respect to the common elements by the Board of Directors of the Association.
  - (iv) Expenses agreed upon as common expenses by a majority of the members of the Association.
- e. "Condominium Unit" means the fee simple interest and title in and to a unit together with the undivided interest in the general common elements and the limited common elements appurtenant thereto, as defined herein.
- f. "Declarant" means Sky Development, a Colorado general partnership, its successors and assigns.
- g. "Declaration" means this Declaration, and any and all duly executed amendments, supplements, or additions thereto, if any.
- h. "General Common Elements" means and includes all of the common elements except those portions thereof which constitute "Units" or "Limited Common Elements" and shall include:
- (i) The real property described above.
  - (ii) The structural components of the buildings including the foundations, columns, girders, beams and supports of the buildings.
  - (iii) The exterior walls of the buildings, the main or bearing walls within the buildings and the main or bearing sub-flooring and roofs of the buildings.
  - (iv) All sidewalks, roads, driveways, yards, gardens and all automobile parking areas.
  - (v) Any installations consisting of equipment and materials making up any central or public utility services, whether located in common areas or in condominium units.

(vi) In general, all apparatus and installations existing or provided for common use.

(vii) All other parts of the project, real property, and improvements necessary or convenient to its existence, maintenance and safety which are normal and reasonable in common use.

(viii) All property owned by the Association.

i. "Limited Common Elements" means any common element designated and reserved for the exclusive use by the owner of a particular condominium unit or units or are limited to or reserved for less than all of the condominium units, as shown on the Map. By way of illustration, but not limitation, any balcony, terrace, porch, patio, stairs and storage area which is identified on the condominium map with the same designation by which a condominium unit is identified shall be a limited common element for the exclusive use of that condominium unit or units.

j. "Map" means and includes the engineering survey of the land located thereon all of the improvements, the floor and elevation plans and any other drawings or diagrammatic plan depicting a part or all of the improvements and land including the map for Powderview at the Greens filed December 5, 1984 and bearing Reception No. 385161 of the records of Gunnison County, Colorado.

k. "Managing Agent", as used herein, shall mean a Managing Agent which may hereafter be appointed by the Board of Directors of the Association of Unit Owners. The title "Managing Agent" shall also refer to the person, firm or entity which shall be selected and appointed by a majority of Owners in accordance with the provisions of Paragraph 17 of this Declaration. Whenever there shall be no Association capable of performing the functions to be performed by an Association herein, such Managing Agent, if so appointed, shall also be authorized to perform any function, duty or responsibility which would otherwise be performed by such Association, its officers, directors and agents hereunder.

l. "Mortgage" means any real estate mortgage, deed of trust or security instrument by which a condominium unit is encumbered.

m. "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who own a condominium unit or units.

n. "Project" means the real property and the building and all improvements and structures thereon, together with all rights, easements and appurtenances belonging thereto, submitted to condominium ownership by this Declaration and which may be subsequently submitted to condominium ownership under the terms of this Declaration or any Supplemental Declaration as is hereinafter provided.

o. "Real Property" means the property identified above.

p. "Unit" means an individual air space unit, which is contained within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of such unit as shown on and described in the Condominium Map, together for common utility facilities, the interior decorated or finished surfaces of such unit's interior walls, floors, ceilings, windows and doors and the interior non-supporting or non-load bearing walls within the unit. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

The term "unit" does not include the undecorated or unfinished surfaces of the perimeter walls, floors or ceilings of a unit, any utility facilities running through the unit that serve more than one unit, any structural component of the building, or any other common element or part thereof located within the unit.

2. Division of Property into Condominium Units.

Subject to the reservation to enlarge and supplement the project pursuant to Paragraph 37 of this Declaration, the project is hereby divided into four (4) condominium units as follows:

Ex. A a. Four (4) fee simple estates, each consisting of a separately designated unit, together with an undivided interest in the common elements appurtenant to such unit, and any limited common elements designated and reserved to such unit, as set forth on attached Exhibit "A", and incorporated herein by reference.

b. Subject to the limitations herein contained, any owner shall have the non-exclusive right to use and enjoy the general common elements and shall have the exclusive right to use and enjoy any limited common elements which may be designated on the condominium map for that owner's condominium unit.

c. The undivided interest in the general common elements is subject to the right of the Declarant to enlarge and supplement the project.

3. Inseparability of a Condominium Unit. Each unit and the undivided interest in the common elements, the easements appurtenant thereto and the exclusive use of the limited common elements designated for such unit shall together, comprise one condominium unit which shall be inseparable and may be conveyed, leased, devised or encumbered only as a unit, except as provided in the event a building is divided into interval ownership, as set forth in Paragraph 4.

4. Interval Ownership. As used in this Declaration, "Interval Ownership" means the creation of interests in a Unit of either interval estates or time-span estates, as such estates are defined by the Colorado statutes as amended from time to time. Such ownership is permitted in this condominium project, upon the express condition that the entire building in which such interval ownership is to be undertaken shall be such ownership. Each interval ownership estate shall constitute for all purposes an estate or interest in real property, separate and distinct from all other interval ownership estates in the same Unit or any other Unit, and such estates may be separately conveyed and encumbered.

Declarant hereby represents that it has no present intent at the time of execution and recordation of this Declaration, to develop interval ownership with respect to any portion of the project. This paragraph is to reserve, however, that option to itself and to owners, upon consent of all owners in a building.

5. Condominium Map. The Condominium Map shall be filed for record prior to the first conveyance of a Condominium Unit shown thereon. Such map shall consist of and set forth the following:

a. The legal description of the real property and a survey thereof.

b. The linear measurements and locations, with reference to the exterior boundaries of the land, of the buildings and all other improvements built on the property.

c. The floor and elevation plans of the buildings.

d. The appropriate designation and identification of all general common elements and limited common elements.

Declarant reserves the right to amend the condominium map from time to time, to conform the same according to the actual location of any of the improvements and to establish, relocate and vacate easements, access roads and parking area. Declarant's right under this paragraph shall terminate upon the conveyance of all of the condominium units set forth on the condominium map to which reference is made, or within one year of the date of filing the condominium map.

As a part of the condominium map, there shall be filed for record a certificate of a registered land surveyor of the State of Colorado, certifying that the improvements as constructed conform substantially to the map, and that the map fully and accurately depicts the layout, measurements and location of all of the improvements on the real property; the condominium unit designations, the dimensions of such units and the elevations of the unfinished floors and ceilings.

In interpreting the condominium map or any part thereof, the existing physical boundaries of the units shall be conclusively presumed to be its boundaries.

Supplemental condominium maps shall be filed prior to the conveyance of any condominium units shown thereon and any supplemental map shall contain the same requirements as set forth for the original condominium map.

6. Description of Condominium Unit. Every instrument affecting title to a condominium unit may describe that condominium unit as follows:

Condominium Unit \_\_\_\_\_, Building \_\_\_\_\_,  
POWDERVIEW AT THE GREENS CONDOMINIUMS, according  
to the Condominium Map bearing Reception No.  
385161 of the records of Gunnison County,  
Colorado, and the Condominium Declaration per-  
taining thereto recorded in Book 612 at Page  
908 of the records of Gunnison County, Colorado.

Such method of description shall be sufficient for all purposes to sell, convey, transfer, and encumber or otherwise affect the condominium unit and the undivided interest in the common elements appurtenant to the condominium unit and all other appurtenant properties and property rights and incorporates all of the rights, duties, limitations and burdens incident to ownership of a condominium unit as described in this Declaration.

The reference to the Condominium Map and the Condominium Declaration in any instrument shall be deemed to include any supplements or amendments to the Condominium Map or the Condominium Declaration, whether or not specific reference is made thereto.

7. Title. A condominium unit may be held and owned by more than one owner as joint tenants or as tenants in common, or in any real property tenancy or estate recognized under the laws of the State of Colorado.

8. Term of Ownership. The separate estate of an owner of a condominium unit created by this Declaration shall continue until revoked in the manner contained in this Declaration or by operation of law.

9. Non-Partitionability and Transfer of Common Elements. The common elements shall be owned in common by all of the owners of the units and shall remain undivided. By the acceptance of his deed or other instrument of conveyance or assignment, each owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the common elements. Each owner specifically agrees not to institute any action therefor. Furthermore, each Owner agrees that this paragraph may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. Further, all owners, and the Association, covenant that, except as provided in Paragraph 30, they shall neither by act nor omission, seek to abandon, subdivide, encumber, sell or transfer the common elements without first obtaining the written consent of 80% of the first mortgagees of the individual condominium units. Each such mortgagee shall have one vote for each mortgage owned by it. Any such action without the written consent of said mortgagees shall be null and void.

10. Use of General Common Elements and Limited Common Elements. Each owner shall be entitled to exclusive ownership of his condominium 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.

11. Use and Occupancy. The condominium units in the project shall be used and occupied solely for residential purposes by the owner, his family, guests, invitees and tenants. Such use and occupancy shall be subject to the provisions contained herein. This restriction as to residential use only, shall not apply to the Declarant, its agents, employees, invitees and assigns during the period of construction and sale of the condominium units. Specifically, and in addition thereto, the Association may use any condominium unit which it owns or leases as a business office and/or residence for any resident manager or employee of the Association.

12. Easements for Encroachments. In the event that any portion of the common elements encroaches upon any unit or units, or in the event that any portion of a unit encroaches upon any other unit or units or upon any portion of the common elements, or in the event any encroachment shall occur in the future as a result of (1) settling of a building; or (2) alteration or repair to the common elements; or (3) repair or restoration of a building(s) and/or a unit(s) after damage by fire or other casualty, or condemnation or

eminent domain proceedings; a valid easement shall exist for the encroachment and for the maintenance of the same so long as the building(s) stands or encroachment exists. In the event that any one or more of the units or buildings or other improvements comprising part of the common elements are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the common elements or on the units for purposes of marketability of title or other purposes. In the interpreting of any and all provisions of the Declaration, subsequent deeds to and/or mortgages relating to condominium units, the actual location of a unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such unit indicated on the condominium map.

13. Reservation for Access-Maintenance, Repair and Emergencies. The owner of a unit shall have the irrevocable right, to be exercised by the Association, its officers, agents and employees, to have access to each unit and all common elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the common elements or to another unit.

Damage to the interior or any part of a unit, except for owner installed or constructed improvements, resulting from the maintenance, repair, emergency repair or replacement of any of the common elements or as a result of emergency repairs within another unit at the direction of the Association, shall be a common expense of all of the owners; provided, however, that if such damage is caused by the negligence of the Owner of the unit, his agents, employees, invitees or tenants, then such owner shall be responsible and liable for all of such damage and the cost thereof shall be the owner's obligation and shall be immediately paid upon demand therefor.

All damaged improvements shall be restored substantially, to the extent reasonably practical, to the same condition in which they existed prior to such damage.

All maintenance, repairs and replacement of the common elements, whether located inside or outside of any unit (unless caused by the negligence, misuse or deliberate act of an Owner), shall be the common expense of all of the owners.

14. Separate Assessments and Taxation - Notice to Assessor. The Declarant shall give written notice to the Assessor of the County of Gunnison, Colorado, of the creation of condominium ownership of this project, as provided by the Condominium Ownership Act of the State of Colorado, so that each condominium unit, together with its undivided interest in the common elements and limited common elements appurtenant thereto, shall be deemed a separate parcel and subject to separate assessment and taxation.

15. Assessments and Taxation. Each condominium unit shall be separately assessed for all taxes and assessments of the State of Colorado, the County of Gunnison or any other political subdivision or district having authority to tax. For the purpose of such assessment, the valuation of the common elements shall be apportioned among the condominium units in proportion to the undivided interest in the common elements appurtenant to such condominium units.

16. Association as Attorney-in-Fact. This Declaration does hereby make mandatory and does constitute the irrevocable appointment of the Association as attorney-in-fact for the owner of every condominium unit for all purposes with respect to the project upon its damage, destruction or obsolescence.

17. Authority of Powderview at the Greens Homeowner's Association. The title to any condominium unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or any prior owner shall constitute the appointment of the Association as the Owner's attorney-in-fact for the purposes expressly set forth in this Declaration. The Association, as attorney-in-fact, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other document with respect to the interest of the owner of a condominium unit for the purposes expressly set forth in this Declaration.

Each owner shall comply strictly with the provisions of this Declaration, any supplement or amendment therefor, the Articles of Incorporation and Bylaws of the Association and all decisions, resolutions, rules and regulations of the Association adopted in accordance with this Declaration and the Articles of Incorporation and Bylaws of the Association. Failure to comply with any of the same shall be grounds for an action to recover any amounts due, for damages or injunctive relief or both, together with reasonable attorneys' fees, and costs, incurred in connection therewith, brought by the Association on behalf of the owners, or, in a proper case, by any aggrieved owner.

The Association shall have the duty of maintaining and repairing all of the common elements within the project. The cost of all such maintenance shall be a common expense of all of the owners. The Association shall not be required to obtain the prior approval of the owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and its Articles of Incorporation and amendments, the Association shall provide to the Owners the following duties and services, all of which shall be paid as a part of the common expense assessments:

- a. To maintain, repair and restore the common elements, except only as otherwise provided.
- b. To administrate and manage the project.



c. To heat, light and furnish other utility services for all common areas.

d. To obtain and maintain all required insurance as hereafter provided.

e. To enforce all of the provisions of this Declaration and the Association's rules and regulations and to collect all obligations and assessments owed to the Association by the owners.

f. To act as attorney-in-fact for the owners in accordance with this Declaration.

g. To perform all other acts required by this Declaration, or the Articles of Incorporation and Bylaws of the Association, or any amendments thereto.

h. In addition to the foregoing, the Association shall have the right to hire one or more persons including a managing agent to perform such services. No contract or agreement for the employment of a managing agent or professional manager for the project shall be for a term in excess of three years and any such agreement shall provide that the same may be terminated with or without cause and without payment of any termination fee on ninety (90) days written notice. The Bylaws of the Association, including any amendments thereto, shall comply with all statutory requirements of the State of Colorado in effect on the date of this Declaration or hereafter adopted.

18. Administration and Management By the Association. The administration and management of this project shall be governed by this Declaration and the Articles of Incorporation and the Bylaws of the Association. In the event of any conflict between or among the provisions of the Declaration (including all supplements thereto), the Articles of Incorporation or Bylaws of the Association, the Declaration shall control over the Articles and Bylaws, and the Articles shall control over the Bylaws.

The owner of a condominium unit, upon becoming such owner, shall be entitled and required to be a member of the Association and shall remain a member for the period of his ownership.

There shall be one membership in the Association for each condominium unit. Such membership shall be appurtenant to the condominium unit and shall be transferred automatically by a conveyance of the condominium unit to the new owner.

Each membership in the Association shall be entitled to cast a vote in accordance with the ownership interest of the general common elements appurtenant to that condominium unit as is provided in this Condominium Declaration.

No person other than an owner may be a member of the Association and a membership may not be transferred except in connection with the conveyance or transfer of the condominium unit; provided however, that such membership may be assigned to the holder of a mortgage as further security for the loan secured by the lien of the mortgage holder upon the condominium unit.

The Association shall have the full power and authority to make all certifications required by the Federal Home Loan Mortgage Corporation regarding the extent of, and limitation upon, the rights, powers and privileges of the Association hereunder.

19. Owner's Maintenance Responsibility of Unit.

The owner of a condominium unit shall keep and maintain the interior of his unit, including, without limitation, the interior walls, ceilings, floors, windows, glass and all permanent fixtures and appurtenances thereto in a good and proper state of repair and in a clean and attractive condition.

The Owner shall not be deemed to own any utilities running through his unit which serve one or more other units except as tenants in common with the other owners. No utilities shall be altered, changed, relocated or disturbed without the prior written consent of the Association.

Such right to repair, alter and remodel shall carry the obligation to replace any finished materials removed with similar or other types or kinds of finishing materials.

All fixtures and equipment installed within the unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are referred to as "utilities") enter the unit shall be maintained and kept in repair by the owner thereof.

An owner shall neither perform nor permit any act or work that will impair the structural soundness or integrity of the building or impair any easement or utility.

20. Revocation or Amendment of Declaration. This Declaration shall not be revoked, unless all of the owners and all of the holders of any recorded first mortgage covering or affecting any or all of the units consent to such revocation by an instrument(s) duly recorded in the records of Gunnison County, Colorado; except only as otherwise provided in paragraph 16 pertaining to the appointment of the Association as attorney-in-fact in the event of damage, destruction, obsolescence or condemnation of the project.

This Declaration shall not be amended unless the owners representing an aggregate ownership interest of sixty percent (60%) or more of the general common elements, and the holders of any recorded first mortgages representing an aggregate of sixty percent (60%) of such first mortgages covering or affecting any or all units consent to such amendment by an instrument(s) duly recorded in the records of Gunnison County, Colorado; provided, however, that the undivided interest in the common elements appurtenant to each unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the owners and all of the holders of first mortgages, as above defined, as expressed in an amended Declaration duly recorded in Gunnison County, Colorado. Notwithstanding the provisions of this paragraph, in the event of expansion of the project, the undivided interest in the general common elements shall be adjusted, as more fully set forth in Paragraph 37.

The consent(s) of any junior mortgage holders shall not be required under the provisions of this paragraph.

In determining the appropriate percentage approval of the holders of first mortgages, whenever such approval may be required for any action taken by the owners or the Association pursuant to this Declaration, each first mortgage shall have one vote for each first mortgage owned by it.

Notwithstanding the foregoing paragraphs, the Declarant hereby reserves and is hereby granted the right and power, until such time as all of the condominium units within the project have been conveyed to third person purchasers, to record a special amendment to this Declaration, to comply with any requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any successor thereto, or to induce any such agency or entity to make, purchase, sell, insure or guarantee first mortgages pertaining to any condominium unit in the project.

Such amendment shall only be effective upon compliance with the requirements of this paragraph, and no such amendment made by the Declarant shall in any manner affect or impair the lien of a first mortgage upon a unit within the project or any warranty made by an owner or a holder of a first mortgage in order to induce any of the above named agencies or entities to make, purchase, insure or guarantee the first mortgage on any owner's unit.

The provisions of this paragraph shall not be deemed to prohibit the right of the Declarant to supplement and enlarge the project and modify the undivided interest in the general common elements.

21. Assessment for Common Expenses by the Association. The Declarant, for each condominium unit owned by it, and each owner of a condominium unit by the acceptance of a deed therefor, shall be deemed to covenant and agree and shall be obligated to pay to the Association all assessments made by the Association for the purposes provided in this Declaration.

The Assessments and expenses pertaining to the common elements and to the project as a whole shall be apportioned among all of the owners of condominium units, in accordance with their undivided interest in the general common elements. The limited common elements shall be maintained as general common elements and the owners having use thereof shall not be subject to any separate charge or assessment therefor.

During the period of development of the project and until the sale of a condominium unit by the Declarant to a third person, the quarterly assessments to be paid by the Declarant on such condominium units shall be based upon the actual cost and expense required to maintain that condominium unit's required share of the common expenses and shall not include any amounts necessary for contingencies, reserves or other funds not required for the cost of operating and maintaining the common elements on a day-by-day basis.

22. Amount of Assessments for Common Expenses. The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association

to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the common elements, which sums may include, among other things, expenses of management, taxes and special assessments until the condominium units are separately assessed, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, trash collection, water system expenses, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the owners.

The omission or failure of the Association to fix such assessment for any period shall not be deemed a waiver, modification or release of the owners from their obligation to pay the same. In the event that the Association fails to pay any service charges imposed by a district providing services to it, each owner shall be personally responsible and liable for the required payments to such district, and the fact that the owner has already paid the Association therefore, shall not exempt the owner from liability.

Each owner shall be obligated to pay all charges for any separately metered utilities servicing his condominium unit. In the event that any utility is master-metered to the Association, then such utility service shall be a part of the common assessments as above provided.

The Association shall be obligated to establish a reserve fund for the maintenance, repair and replacement of the common elements. The amount of such fund shall be determined by the Association and shall be funded through quarterly payments of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the condominium unit owners for such purposes.

In addition to assessments for common expenses as above set forth, the Association may at any time and from time to time determine, levy and assess any special assessment for the purpose of paying, in whole or in part, the costs, fees or expenses of any construction, reconstruction, repair, replacement or maintenance of the common elements of the project or any facilities located thereon. Such special assessment shall be assessed to each owner in accordance with his ownership interest in the common elements as set forth in the attached Exhibit A and shall be due and payable in the manner set forth in the notice of such special assessment.

On the date of closing of the initial sale of each condominium unit within the project, both pursuant to this Declaration and as it may be enlarged as provided in this Declaration, there shall be paid to the Association by the unit purchaser a sum equal to one quarterly assessment in accordance with the assessment schedule then in effect. On any subsequent

transfers of ownership, the Seller shall be entitled to a refund of the advanced assessment and the purchaser shall be responsible to deposit a sum equal to one quarterly assessment in accordance with the assessment schedule then in effect.

23. Time of Payments of Assessments for Common Expenses. The assessments of the Association shall be computed and determined on an annual basis. Assessments shall be payable quarterly in advance on or before the tenth day of the first month of each quarter by the owners of the units. The Association shall give written notice to the owners of the units of the annual assessment, and shall deliver to each owner itemized quarterly statements.

If any such quarterly payment, or special assessment, is not paid within ten days after the date that it becomes due and payable, the Association may assess a "late charge" thereon in an amount not exceeding \$10.00 per month to cover the extra costs and expense involved in handling such delinquent payment. In addition, the Association shall establish a late payment penalty, not to exceed 24% per annum, which rate shall be determined at least annually and notice of which shall be furnished to each owner.

24. Lien for Non-Payment of Common Expenses. All sums assessed to any condominium unit and not paid within thirty (30) days from the date of assessment, together with late payment charges thereon as herein provided, shall constitute a lien on such condominium unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such condominium unit except tax and assessment liens on the condominium unit by any governmental authority and all sums unpaid on a first mortgage of record, including all unpaid obligatory advances made pursuant to such mortgage.

To evidence such lien, the Association, by the Board of Directors, officers, manager or attorney for the Association, may prepare a written notice of lien setting forth the amount of the assessment, the amount remaining unpaid, the name of the owner of the condominium unit and a description thereof. Such notice shall be signed by the Association and may be recorded in the records of Gunnison County, Colorado. Such lien shall attach from the date of the failure of payment of the assessment and shall continue as a lien until all sums with interest and other charges thereon, including the Association's attorney's fees and costs in the drafting and recording of said notice of lien and release thereof, have been fully paid, and such lien shall not be extinguished nor annulled by the foreclosure of any other lien.

Such lien may be enforced by foreclosure by the Association in the same manner as a foreclosure of a mortgage. In such foreclosure, the owner shall be required to pay the costs and expenses for such proceedings, the cost and expenses for filing the notice of claim of lien and all reasonable attorney's fees and other costs of collection. The owner shall also be required to pay to the Association the assessments for

the 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 the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Any mortgagee holding a lien on a condominium unit may pay, but shall not be required to pay, the amount secured by such lien, and upon such payment said mortgagee shall have a lien on such unit for the amounts paid of the same rank as the lien of its mortgagee.

25. Owners' Obligation for Payment of Assessments.

The amount of the common expenses assessed against each condominium unit shall be the personal and individual debt of the owner or owners thereof at the time the assessment is made. Suit to recover a money judgment for such unpaid debt shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No owner may exempt himself from the liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or abandonment of his unit.

26. Statement of Account. Upon payment of a reasonable fee, not to exceed \$25.00, and upon the written request of any owner, prospective owner, or holder of a mortgage of a condominium unit, the Association shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current quarterly assessment and the date that such assessments become due, including but not limited to insurance premiums, 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 shall be complied with within ten days of such request, then such requesting party shall not be liable for, nor shall the unit if conveyed, be subject to any lien for any unpaid assessments against the subject unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the unit by the Declarant.

The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore, subject only to the limitations set forth in this paragraph. The term "Grantee" as used in this paragraph shall not apply to the holder of any first mortgage upon a condominium unit, or to any person or entity acquiring title to a condominium unit by either sheriff's or public trustee's deed through foreclosure, or who acquires title by a deed given in lieu of foreclosure of a mortgage, deed of trust, or other security instrument encumbering such condominium unit.

27. Termination of Mechanic's Lien Rights and Indemnification. Subsequent to the completion of the improvements described on the Condominium Map, no labor performed or materials furnished and incorporated into 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 condominium unit of another owner not expressly consenting to or requesting the same, or against the common elements, except as to the undivided interest to the unit of the owner for whom such labor shall have been furnished. The provisions herein contained are subject to the rights of the Association, as set forth herein. Each owner shall indemnify and hold harmless each of the other owners from and against liability or loss arising from the claim of any lien against the condominium unit or any part thereof, of any other owner for labor performed or for materials furnished in work on such owner's unit.

28. Mortgaging a Unit - Priority. Any owner shall have the right from time to time to mortgage or encumber his interest in a condominium unit by mortgage. A first mortgage shall be one which has first and paramount priority under applicable law and a mortgage imposed against the condominium unit by virtue of the first sale of such unit by the Declarant shall be construed and presumed to be a first mortgage. The owner of a condominium unit may create junior mortgages on the following conditions:

a. That any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for common expenses and other obligations created by this Declaration, the Articles of Incorporation and By-Laws of the Association; and

b. That the holder of any junior mortgage shall release, for the purpose of restoration of any improvements upon the project, all of his right, title and interest in and to the proceeds under insurance policies upon said project wherein the Association is named insured. Such release shall be furnished upon written request by the Association.

29. Insurance. The Board of Directors of the Association shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates, established by the Colorado Insurance Commissioner, and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of Class A+ or better, covering the risks set forth below. The Board of Directors of the Association shall not obtain any policy where: (1) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the Mortgagor or Mortgagee's designee; or (2) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the company's Board of Directors, policyholders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds. The types of coverages to be obtained and risks to be covered are as follows:

a. Fire insurance with extended coverage and standard risk endorsements, which endorsements shall include endorsements for vandalism and malicious mischief. Said casualty insurance shall insure the entire condominium project and any property, the nature of which is a common element

(including all of the units and fixtures therein initially installed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by Unit owners) together with all service equipment contained therein in an amount equal to the maximum replacement value, without deduction for depreciation of such coverage, if available. All policies shall contain a standard non-contributory mortgage clause in favor of each mortgagee of a Condominium unit, which shall provide that the loss, if any, thereafter, shall be payable to the Association for the use and benefit of mortgagees as their interests may appear.

b. The Association, in its discretion, may obtain DIC coverage, or if deemed appropriate by the Association, and the project is located in an area now identified or hereinafter identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the condominium project in an amount which is the lesser of the maximum amount of insurance available under the act or the aggregate of the unpaid principal balances of the mortgages on the condominium units comprising the condominium project.

c. Public liability and property damage insurance in such limits as the Board of Directors of the Association may from time to time determine, but not in an amount less than \$1,000,000.00 per injury, per person, per occurrence, covering claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the project. Said policy shall also contain a "severability of interest" endorsement.

d. Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

e. The Association shall purchase adequate fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

f. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the project, including plate or other glass insurance and any personal property of the Association located thereon.

All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a condominium unit owner and shall provide that such policies may not be cancelled or modified without at least ten (10) days prior written notice to all of the insureds, including mortgagees. If requested in writing by one or more of the mortgagees,



duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming Powderview at the Greens Homeowner's Association as the insured, as attorney-in-fact for all of the condominium unit owners, which policy or policies shall identify the interest of each condominium unit owner (Owner's name and unit number designation) and first mortgagee. Further, the Association shall require the insurance company or companies providing the insurance coverages described herein to provide each owner and mortgagee a certificate of insurance in regard to such owner's individual condominium unit.

Condominium unit owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further, that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner.

Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personalty or other property belonging to an owner and public liability coverage within each unit shall be the sole and direct responsibility of the unit owner thereof, and the Board of Directors, the Association and/or the managing agent shall have no responsibility therefor.

In the event that there shall be any damage or destruction to, or loss of taking of a unit which exceeds \$1,000.00 or any damage or destruction to, or loss to or taking of the common elements which exceed \$10,000.00, then notice of such damage or loss or taking shall be given by the Association to each first mortgagee of said condominium unit within ten (10) days after the occurrence of such event and the cost of repair is determined.

30. Destruction, Damage, Condemnation or Obsolescence - Association as Attorney-In-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvements of any condominium units, buildings, common elements or other portion of the project which has been so destroyed, damaged, condemned or becomes obsolete. Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the project upon its damage, destruction, obsolescence or condemnation as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary or assistant secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and

power to make, execute and deliver any contract, deed or other instrument with respect to the interest of a condominium unit owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the condominium unit owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the project upon its destruction, damage, obsolescence or condemnation shall be appointed. Said appointment must be approved by the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the common elements and at least seventy-five percent (75%) of the first mortgagees of the condominium units. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the project's original architectural plan and scheme to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement unless all of the owners and all first mortgagees agree not to rebuild in accordance with the provisions hereinafter set forth.

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

If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than seventy-five percent (75%) of the total replacement cost of all of the condominium units in this project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of the insurance and the proceeds of a special assessment to be made against all of the owners and their condominium units. Such special assessment shall be a common expense and made pro-rata according to each owner's percentage of responsibility 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, replacement or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 24. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice

that the condominium unit of the delinquent owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this section. Assessments for the common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notice, all applicable late payment charges as provided in Paragraph 23, on the amount of the assessment and all reasonable attorney's fees and other costs of collection. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- a. For payment of the balance of the lien of any first mortgage;
- b. For payment of taxes and special assessments liens in favor of any assessing entity and the customary expenses of sale;
- c. For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
- d. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- e. The balance remaining, if any, shall be paid to the condominium unit owner.

If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than seventy-five percent (75%) of the total replacement cost of all of the condominium units in this project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their condominium units, provided, however, that owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the common elements and at least seventy-five percent (75%) of the first mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, 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 or assistant secretary, the entire project shall be sold by the Association pursuant to the provisions of this section, as attorney-in-fact, for all of the owners, free and clear of the provisions contained in this Declaration, the map, Articles of Incorporation and Bylaws. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each owner's interest in the 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 condominium unit designation and the name of the owner. From such 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. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's interest in the common elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in this paragraph. In the event that the damage is to be repaired or reconstruction is to be made, then the provisions of the preceding paragraph within this paragraph 30 shall apply.

The owners representing an aggregate ownership interest of eighty percent (80%) or more, of the common elements in this project may agree that the common elements are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the approval of at least eighty percent (80%) of the first mortgagee's of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate set by the Board of Directors for late payments and all reasonable attorneys' fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in this paragraph.

The owners representing an aggregate ownership interest of eighty percent (80%) or more, of the common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan or agreement must have the approval of not less than eighty percent (80%) of the first mortgagees of the condominium units. 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 or assistant secretary, the entire project 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, map, the Articles of Incorporation and the Bylaws. The sale proceeds shall be apportioned among the owners on the basis of each owner's interest in the common elements, and such apportioned proceeds shall be paid into separate accounts, each account representing one condominium unit. Each such account shall be in the name of the Association and shall be further identified by the condominium unit designated and the name of the owners. 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 this paragraph.

31. Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the condominium project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof.

a. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "condemnation award" shall be payable to the Association.

b. In the event that the entire project is taken, condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The condemnation award shall be apportioned among the unit owners on the same basis of each condominium unit owner's interest in the common elements, provided however, that if a standard different from the value of the property as a whole is employed as the measure of the condemnation award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

c. On the basis of the principle set forth immediately above, the Association shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Paragraph 30.

d. In the event that less than the entire condominium project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership shall not terminate. Each owner shall be entitled to a share of the condemnation award to be determined in the following manner: as soon as practicable, the Association shall reasonably and in good faith, allocate the condemnation award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the owners as follows: (i) the total amount allocated to taking of or injury to the common elements, shall be apportioned among the owners on the basis of each owner's interest respectively in the common elements; (ii) the total amount allocated to severance damages shall be apportioned to those condominium units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular unit and to the improvements an owner has made within his own unit shall be apportioned to the particular unit involved and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances or as determined by judicial decree. If the allocation of the condemnation award is already established in negotiations, judicial decree or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in Paragraph 30.

e. The Association shall timely notify each First Mortgagee of any condominium unit of the commencement of the condemnation proceedings or eminent domain proceedings and shall notify said First Mortgagees in the event of the taking of all or any part of the common elements, if the value of the common elements taken exceeds \$10,000.00.

32. Property for Common Use. The Association may acquire and hold for the use and benefit of all of the owners, real and 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 condominium unit. A conveyance of a condominium unit shall transfer to the grantee ownership of the grantor's beneficial interest in all such property acquired and held by the Association.

33. Registration by Owner of Mailing Address. Each owner shall register his mailing address with the Association, and except for quarterly 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 Association shall be sent by certified mail, postage prepaid, to the address of the Association as designated in the Articles of Incorporation and Bylaws of the Association. All notices or demands intended to be served on 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. In the event that a condominium unit is owned by a partnership, joint venture, corporation or other such legal entity, or by more than one person or other entity, the Owners shall designate to the Association, in writing, the name and address of one agent of the Owners to whom all legal or official assessments, liens, levies or notices shall be properly mailed.

34. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of units and of the common elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations shall be binding upon all owners and the Association may take such action, including judicial action as may be necessary to enforce compliance with such rules and regulations and to obtain damages and reasonable attorneys' fees for noncompliance to the extent permitted by law.

35. Additional Rights of Holders of First Mortgage. In addition to any other rights provided in this Condominium Declaration, any first mortgage holder who shall make a request in writing to the Association, shall have the following additional rights:

a. To be furnished a copy of the annual financial statement and audit of the Association, such statement

to be furnished at the time the same is furnished to the owners.

b. To be given written notice by the Association of any meeting of the Association called for the purpose of considering any amendment, revocation or change to the Condominium Declaration or Articles of Incorporation of the Association. Such notice shall state the nature of any such change being proposed.

c. Upon reasonable notice to examine the books and records of the Association during normal business hours.

36. Reservations by Declarant. Notwithstanding any other provisions expressed or implied in this Declaration or the Articles of Incorporation and Bylaws of the Association, the Declarant specifically reserves unto itself, its successors and assigns, the following rights:

To elect and appoint the Board of Directors of the Association and to appoint the managing agent until seventy-five percent (75%) of the maximum number of condominium units permitted in the project as set forth in Paragraph 37 have been sold and conveyed by the Declarant or for a period of three (3) years after the first sale and conveyance of a condominium unit, whichever occurs first in time.

37. Reservation to Enlarge and Supplement Condominium Project. Notwithstanding any other provisions expressed or implied in this declaration or the Articles of Incorporation and the Bylaws of the Association, the Declarant specifically reserves unto itself, its successors and assigns, the right to expand the condominium units set forth in paragraph 2 of this Declaration. Such condominium units shall be located on the property.

Gunnison County has approved a project of not to exceed 55 units. Declarant hereby specifically reserves the right to enlarge the project to that extent, and, further, to seek approval from the County to expand the project to a total of seventy (70) units. In no event shall the project exceed seventy (70) units.

Such enlargement may be accomplished by filing for record in the office of the Clerk and Recorder of Gunnison County, Colorado, a supplement or supplements to this Declaration containing a legal description of the site or sites for the new condominium units together with a supplemental condominium map containing the same information with respect to the new condominium units as was required on the original condominium map with respect to the original condominium units or by such other method as may be required under the laws of the State of Colorado. The enlargement may be accomplished in stages by successive amendments.

In the event of such enlargement, the definitions used in this Declaration automatically shall be enlarged to

encompass and refer to the Project as so enlarged. All conveyances of condominium units after such enlargement shall be effective to transfer rights in the Project as enlarged, by use of the form of description set forth in Paragraph 6 hereof, with additional references to the supplemental declaration and the supplemental condominium map.

The recording in the office of the Clerk and Recorder of Gunnison County, Colorado of a supplemental condominium map and supplemental condominium declaration incident to any enlargement shall operate automatically to grant, transfer and convey to all owners of condominium units in the entire Project, both as originally included under this Declaration, and as enlarged, those undivided fractional interests in all common elements of the entire Project as shall be set forth in said supplemental condominium declaration. Upon such enlargement of the Project, both the voting rights in the Association as set forth in Paragraph 18 hereof, and the assessment for common expenses by the Association as set forth in Paragraph 21 hereof, shall be determined in accordance with the undivided fractional interests in all common elements of the entire project as set forth in said supplemental condominium declaration. The revision of the undivided fractional interest in the common elements appurtenant to each unit, when revised by the filing of such supplemental condominium declaration, shall not be deemed an amendment or revocation of this Declaration or any previously executed and recorded supplemental declaration within the meaning of paragraph 21 hereof. Such recording shall also operate to vest in any then mortgagee of any condominium unit in the Project as it existed before such enlargement a security interest in the undivided interests so acquired by the owner of the condominium unit encumbering the new common elements added to the Project as a result of such enlargement.

Any such new condominium units shall be subject to all the terms and conditions of this Declaration and of such supplemental declaration or declarations, and the condominium units shall be subject to new condominium ownership with all the incidents pertaining thereto as specified herein, upon placing the supplemental condominium map or maps and supplemental condominium declaration or declarations of record in the office of the Clerk and Recorder of Gunnison County, Colorado.

The appurtenant undivided interests of all owners in the common elements, whether under the original buildings included in the Project, or as expanded, shall be expressed as a fraction, the numerator of which shall be the number 1, and the denominator of which shall be the total number of condominium units within the then existing Project, as set forth in this Declaration and any supplemental declaration or declarations so recorded.

#### 38. General Terms and Conditions.

a. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of



this Declaration and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

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

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

d. Any and all sums, amounts, expenses, assessments or any funds due and payable as provided in this Declaration which are not paid within thirty (30) days of the date that the same are due and payable shall bear a late payment penalty at the rate then established by the Board of Directors, not to exceed 24% per annum as more fully set forth in paragraph 23 from the date that the same were first due and payable to the date until paid.

e. This Declaration is filed in the records of Gunnison County, Colorado and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Declaration shall be in the District Court of Gunnison County, Colorado.

f. It is agreed that if any action is brought in a court of law as to the enforcement, interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

g. It is understood and agreed that this Declaration shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF, the Declarant has executed this Condominium Declaration the date first above written.

SKY DEVELOPMENT, a Colorado general partnership,

By Larry L. Hamilton  
Larry L. Hamilton, General Partner

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing Condominium Declaration was acknowledged before me this 4th day of December, 1984, by Larry L. Hamilton, General Partner of Sky Development, a Colorado general partnership.

My commission expires: 2-26-88

WITNESS my hand and official seal.


Bitvel...  
Notary Public  
Address:  


EXHIBIT A

<u>UNIT</u>	<u>BUILDING</u>	<u>UNDIVIDED INTEREST</u>
Unit <u>3</u>		1/4
Unit <u>4</u>		1/4
Unit <u>5</u>		1/4
Unit <u>6</u>		1/4