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By *Joanne M. Reitingger* DEPUTY

353879 CONDOMINIUM DECLARATION FOR PARADISE CONDOMINIUM

TABLE OF CONTENTS

ARTICLE I. GENERAL TERMS 2

 1.1 Terms Defined Above 2

 1.2 Certain Definitions 2

ARTICLE II. CONDOMINIUM UNIT DESIGNATIONS AND DESCRIPTIONS 8

 2.1 Recordation of Maps 8

 2.2 Designation of Apartment Units 8

 2.3 Interference with Structural Soundness of the Building(s) 9

 2.4 Limited Common Elements 9

 2.5 Regulation of Common Elements 10

 2.6 Inseparable Units 10

 2.7 Descriptions 10

 2.8 Encroachments 11

 2.9 Governmental Assessment 11

 2.10 Use Restrictions 12

 2.11-2.16 Change of Common Elements 15-16

ARTICLE III. RIGHTS AND OBLIGATIONS OF OWNERSHIP 17

 3.1 Ownership 17

 3.2 Partition 17

 3.3 Exclusiveness of Ownership 17

 3.4 Single Family Residential Dwelling 17

 3.5 Mechanic's and Materialman's Liens 17

 3.6 Right of Entry. 18

 3.7 Owner Maintenance 18

 3.8 Alteration 19

 3.9 Restriction of Ownership 19

 3.10 Liability for Negligent Acts 20

 3.11 Subject to Declaration and By-Laws 20

 3.12 Default Notice to Mortgagee 20

ARTICLE IV. MANAGEMENT AND ADMINISTRATION 20

 4.1 Homeowner's Association 20

 4.2 Specific Power to Restrict Use and Enjoyment 21

 4.3 Insurance 23

 4.4 Accounting and Financial Reporting Procedures 25

ARTICLE V. MAINTENANCE ASSESSMENT 25

 5.1 Assessments 25

 5.2 Maintenance Assessment 26

 5.3 Declarant's Obligations with Respect to Maintenance Expenses During the Construction Period. 27

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2.5	Regulation of Common Elements	10
2.6	Inseparable Units	10
2.7	Descriptions	10
2.8	Encroachments	11
2.9	Governmental Assessment	11
2.10	Use Restrictions	12
2.11-2.16	Change of Common Elements	15-16

ARTICLE III. RIGHTS AND OBLIGATIONS OF OWNERSHIP 17

3.1	Ownership	17
3.2	Partition	17
3.3	Exclusiveness of Ownership	17
3.4	Single Family Residential Dwelling	17
3.5	Mechanic's and Materialman's Liens	17
3.6	Right of Entry.	18
3.7	Owner Maintenance	18
3.8	Alteration	19
3.9	Restriction of Ownership	19
3.10	Liability for Negligent Acts	20
3.11	Subject to Declaration and By-Laws	20
3.12	Default Notice to Mortgagee	20

ARTICLE IV. MANAGEMENT AND ADMINISTRATION 20

4.1	Homeowner's Association	20
4.2	Specific Power to Restrict Use and Enjoyment	21
4.3	Insurance	23
4.4	Accounting and Financial Reporting Procedures	25

ARTICLE V. MAINTENANCE ASSESSMENT 25

5.1	Assessments	25
5.2	Maintenance Assessment	26
5.3	Declarant's Obligations with Respect to Maintenance Expenses During the Construction Period.	27
5.4	Budgets; Payment of Maintenance Assessment; Replacement Reserve Fund.	28
5.5	Date of Commencement of Maintenance Assess- ment Uniform Rules.	29
5.6	Special Assessments	29
5.7	Payment of Assessments.	30
5.8	Lien; Remedies.	31
5.9	Maintenance Assessment Fund	32
5.10	Special Assessment Fund	33
5.11	Insurance Assessment	33
5.12	Statement of Assessments	33

ARTICLE VI.	DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS	34
6.1	Destruction or Obsolescence	34
6.2	Judicial Partition	38
6.3	Eminent Domain	38
ARTICLE VII.	RIGHT OF FIRST REFUSAL	38
7.1	Sale or Lease, Right of Refusal	38
7.2	Mortgages Not Affected by Right of First Refusal	40
7.3	Certificate of Satisfaction of Right of First Refusal	40
ARTICLE VIII.	MISCELLANEOUS PROVISIONS	41
8.1	Amendment	41
8.2	Ownership of Common Personal Property	41
8.3	Change in Documents	42
8.4	Notice	42
8.5	Invalidation of Parts	42
8.6	Colorado Condominium Act	42
8.7	Gender	43

CONDOMINIUM DECLARATION
 FOR
 PARADISE CONDOMINIUMS

THE STATE OF COLORADO)
) KNOW ALL MEN BY THESE PRESENTS:
 THE COUNTY OF GUNNISON)

WHEREAS, by this Declaration dated the 24th day of September, 1980 ("Declaration") recorded in _____, et seq., of the Records of Gunnison County, Colorado, Declarant, as hereinafter defined, has filed for record this Condominium Declaration for Paradise Condominiums, covering the Property as hereinafter defined; and

WHEREAS, any first lien mortgagee as of the execution and filing date hereof, as evidenced by consent(s) attached hereto, have agreed in writing to the terms of this Declaration.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT Declarant, Butte View, Ltd. and Bluebonnet, Ltd., both Texas Limited Partnerships, by and through their General Partner, J. B. Fowler Co., Inc., a Texas Corporation, the owner and holder of fee simple title to the Land and Property which is more specifically described in the map and plat of Paradise Condominiums recorded on the 8th day of October, 1980 and bearing reception number 353878 and hereby made a part hereof by this reference for all purposes; and

WHEREAS, Declarant desires to establish a condominium regime under the Condominium Act of the State of Colorado, Colorado Revised Statutes Annotated 38-33-101, et seq., (1973, as amended); and

WHEREAS, Declarant has executed plans for the construction of three (3) buildings and other improvements appurtenant thereto on the Land and Property described in Exhibit "A," which, when completed, shall consist of twenty-five (25) separately designated Apartment Units as hereinafter defined; and

WHEREAS, Declarant does hereby establish a plan for individual ownership in fee simple of estates consisting of the area or space contained within each of the Apartment Units as hereinafter defined, in the three (3) buildings and the co-ownership by the individual and separate Owners thereof, as tenants in common, of all of the remaining General Common Elements, as hereinafter defined in Paragraph 1.2 hereof, and which are hereinafter collectively referred to as the "Common Elements" or "Common Areas."

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

ARTICLE I

GENERAL TERMS

1.1 TERMS DEFINED ABOVE. As used in this agreement, the terms "Property," "Land," "Declarant," "Act" and "Common Elements" or "Common Areas" shall have the meanings respectively indicated in the opening paragraphs hereof.

1.2 CERTAIN DEFINITIONS. As used in this Declaration, the following terms shall have the following meanings unless the context shall expressly provide otherwise:

- (a) "Apartment" or "Apartment Unit" shall mean the elements of a "Condominium Unit" as hereinafter defined, which are not owned in common with the Owners of other Apartment Units in the Project as hereinafter defined, as shown on the Maps as hereinafter defined, and each "Apartment Unit" shall include the apartment space assigned to each "Apartment Unit". The boundaries of each Apartment Unit shall be and are the interior surfaces of the perimeter walls, windows, and window frames, door and door frames, and trims, and the space includes both the portions of the building so described and the space so encompassed and the interior surfaces of any porch or balcony, which has been assigned to the Apartment Unit, excepting the Common Elements. All of the foregoing items are allocated and assigned by the Declarant to each Apartment. The individual ownership of each apartment space assigned to each Apartment Unit as herein defined, shall further include the interior construction, partitions, appliances, fixtures and improvements which are intended to exclusively serve such Apartment Unit, such as, but not by way of limitation, interior room walls, floor covering or finish, closets, cabinets, shelving, individual bathroom and kitchen fixtures, plumbing and appliances, individual lighting and electrical fixtures, air heating systems (excluding the central boiler system), and other separate items or chattels belonging exclusively to such

Apartment Unit which may be removed, replaced, disposed of or otherwise treated without affecting any other Apartment Unit or the ownership, use or enjoyment thereof, so long as the same is done pursuant to the terms of this Declaration. None of the Land in this Project on which any Apartment Unit space is located shall be separately owned, as all land within this Project shall constitute part of the "General Common Elements" of the Property as hereinafter defined, and shall be owned in common by the Owners of the Apartment Units in this Project.

(b) "Common Expenses" means and includes:

- (1) All sums assessed against the Owners by the Managing Agent or Board of Managers of the "Association" as hereinafter defined, pursuant to Paragraph 5.1 hereof and other provisions hereof.
- (2) Expenses of and/or reserves for administration and management, maintenance, repair and replacement of the Common Elements;
- (3) Expenses and/or reserves agreed upon as Common Expenses by the Owners; and
- (4) Expenses declared Common Expenses by provisions of this Declaration and/or by the By-Laws of the "Association".

(c) "Condominium Owners Association" or "Association" means a Colorado nonprofit corporation, the By-Laws of which shall govern the administration of the Property, through the therein referenced Board of Managers or Managing Agent, the membership of which shall be composed of all of the Owners of the Condominium Units according to the By-Laws.

- (d) "Condominium Unit" shall mean an individual Apartment Unit together with the interest in the "General Common Elements" and "Limited Common Elements" designated herein as appurtenant to each Apartment Unit.
- (e) "Construction Period" means all that period of time during which Declarant is developing the Property and selling the Condominium Units, which time period shall extend from the execution date hereof until such time as the Declarant conveys ninety percent (90%) of the Condominium Units, or eighteen (18) months from the date on which the Declarant makes the first transfer of a Condominium Unit to an Owner other than Declarant, whichever occurs first.
- (f) "Declarant's Construction Period Maintenance Obligations" means those obligations specifically set forth in Article V, Section 5.3 herein, which are obligations in effect from the time the first Assessments are due until the end of the Construction Period.
- (g) "General Common Elements or Areas" means and includes
- (1) The Land on which the buildings and other improvements are located;
 - (2) The foundations, columns, girders, beams, supports, main walls, bearing walls, roofs, stairways, entrances and exits or communication ways;
 - (3) The yards and gardens, if any, general parking areas, if any, save and except the Limited Common Elements as hereinafter defined, fences, walks, service easements, storage spaces, if any, save and except the Limited Common Elements as hereinafter defined, and driveways;

- (4) The installations consisting of the equipment and materials making up central services such as power, light, gas and the like;
- (5) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- (h) "Insurance Assessment" means and includes the assessment more specifically described in Article V, Section 5.11 herein.
- (i) "Limited Common Elements" means and includes those portions of the Common Elements or Common Areas which are reserved for the exclusive use of an Owner or Owners of one or more of a Condominium Unit(s) as designated herein, which include assigned covered parking areas, certain porches, certain storage spaces and certain refuse storage spaces, all as indicated on the Maps, as appurtenant Limited Common Elements to a specific Apartment Unit and/or several Apartment Units, all as so indicated.
- (j) "Maintenance Assessment", means and includes the assessment more specifically described in Article V, Section 5.2 herein.
- (k) "Maintenance Assessment Fund" shall mean and include the proceeds of Maintenance Assessments collected by the Association, all of which will be held by the Association for the use and benefit, directly or indirectly, of the Project, all as more specifically set forth in Article V, Section 5.9 herein.
- (l) "Map", "Survey Map", "Maps", or "Plans", means or includes the engineering survey of the Land locating thereon, all of the improvements, the floor and eleva-

tion plans and any other drawing or diagrammatic plan depicting a part of, or all of, the improvements, same being herewith filed, consisting of seven (7) sheets recorded in the Gunnison County Records on the _____ day of _____, 1980 and bearing reception number _____ incorporated herein by this reference for all purposes.

- (m) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more Condominium Units.
- (n) "Premises", "Project" or "Property" means and includes the Land, the buildings, all improvements, and structures thereon, and all rights, easements and appurtenances belonging thereto.
- (o) "Replacement Reserve Fund" shall mean the fund established for repair, maintenance and/or replacement of the Common Elements to be replaced on a regular basis which are funded from a portion of the regular assessment rather than special assessment, all of which is more specifically set forth in Article V, Section 5.4 herein.
- (p) "Special Assessments" shall mean the assessments, determined by the Board of Managers, necessary to provide for the continued operation of the Project, in the event the Maintenance Assessments are insufficient, all as more specifically set forth in Article V, Section 5.6 herein.
- (q) "Special Assessments Funds" shall mean the proceeds of any Special Assessments collected by the Association and held by the Association for the uses and purposes set forth in the resolution creating the Special Assessment, all of which if properly resolved, can be placed in the Maintenance Assessment Fund all as more specifically described in Article V, Section 5.10 herein.

ARTICLE II

CONDOMINIUM UNIT DESIGNATIONS AND DESCRIPTIONS

2.01 RECORDATION OF MAPS. The Survey Map shall be refiled for record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any Condominium Unit. The Survey Map consists of and sets forth (1) the legal description of the surface of the Land; (2) the linear measurements and location, with reference to the exterior boundaries of the Land, of the buildings and all other improvements constructed, or to be constructed, on the Land by Declarant; (3) floor plans and elevation plans of the buildings built, or to be built, thereon showing the location, the building designation, the Apartment Unit designation and the linear dimensions of each Apartment Unit; and (4) the elevations of the interior surfaces of the floors and ceilings as established from a datum plane.

2.2 DESIGNATION OF APARTMENT UNITS. The Property is hereby divided into separately designated Condominium Units consisting of:

- (a) Twenty-five (25) separately designated Apartment Units, each Apartment identified by number and by building symbol or designation on the Plans, the Apartments in each building being described as follows:

BUILDING A - Containing eight (8) Apartment Units, numbered A-101 through A-104 and A-201 through A-204, inclusive, with the size, dimensions, locations and boundaries of each unit being detailed on the survey plat of Building A.

BUILDING C - Containing eight (8) Apartment Units, numbered C-105 through C-108

and C-205 through C-208, inclusive, with the size and dimensions, locations and boundaries of each Apartment Unit being detailed on the survey plat of Building C.

BUILDING D - Containing nine (9) Apartment Units, numbered D-109 through D-112 and D-209 through D-212, inclusive, and Employee Unit D-1, with the size and dimensions, locations and boundaries of each Apartment Unit being detailed on the survey plat of Building D.

- (b) The remaining portion of the Premises, referred to as the Common Elements, shall be owned in common by the Owners. The Owner of each Apartment Unit shall own a percentage of undivided interest in the Common Elements to the extent set opposite the Apartment Unit designation in Exhibit "B" attached hereto and made a part hereof for all purposes. The percentages of ownership shown on Exhibit "B" are derived through use of the following formula: the ratio of an Apartment Unit's square footage bears to the total square footage of all apartments in Paradise Condominium.

2.3 INTERFERENCE WITH STRUCTURAL SOUNDNESS OF THE BUILDING(S).

An Owner shall do no act, nor any work, that will impair the structural soundness or integrity of any building, or impair any easement or hereditament. In addition, no Owner shall in any way alter, modify, add to, or otherwise perform any work whatsoever upon any of the Common Elements, save and except with written consent of the Board of Managers first obtained.

2.4 LIMITED COMMON ELEMENTS. A portion of the Common Elements are set aside and reserved for the exclusive use of the individual Owners, such areas being Limited Common Elements. The Limited Common Elements reserved for the exclusive use of the Owners or groups of Owners as indicated, are certain covered automobile parking spaces, certain storage spaces and certain porches, all of which are shown on the Map. Such

spaces are allocated and assigned by the Declarant to the respective Condominium Units as indicated on Exhibit "A", with the parking spaces assigned to each Apartment Unit being designated by the Apartment Unit number preceded by the prefix "LCE", the storage spaces(s) assigned to each Apartment Unit being designated by the Apartment Unit number preceded by the prefix "LCE". Such Limited Common Elements shall be used in connection with the particular Apartment Unit or Units to the exclusion of the use thereof by the other Owners except by invitation.

2.5 REGULATION OF COMMON ELEMENTS. Portions of the Common Elements are intended as leisure areas, and are improved with gardens, walkways and other facilities. Reasonable regulations governing the use of such facilities by Owners and by their guests and invitees shall be promulgated by the Declarant, or by the Board of Managers of the Association after the same has been elected, or the Managing Agent of the Association. Such regulations shall be permanently posted at the office and/or elsewhere in said recreational areas, and all Owners shall be furnished with a copy thereof. Each Owner shall be required to strictly comply with the Rules and Regulations, and shall be responsible to the Board of Managers for the compliance therewith by the members of their respective families, relatives, guests or invitees, both minor and adult.

2.6 INSEPARABLE UNITS. Each Apartment Unit and its prorata interest in and to the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit.

2.7 DESCRIPTIONS. Every deed, lease, mortgage, deed of trust or other instrument may legally describe a Condominium Unit by its identifying Apartment Unit Number or designation as shown on the Map, followed by the words "Paradise Condominium" and by a reference to this recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise effect the Common Elements.

2.8 ENCROACHMENTS. If any portion of the Common Elements encroaches upon an Apartment Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion or portions of an Apartment Unit or Units encroaches upon the Common Elements, or another Apartment Unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For the purposes hereof, the term "encroachment" includes any and all encroachments, including specifically and without limitation, any encroachments which may exist at this time or which may result from any shifting of the Property, or authorized reconstruction or alterations. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or the Apartment Units.

2.9 GOVERNMENTAL ASSESSMENT. Declarant shall give written notice to the Assessor's Office of the creation of condominium ownership of this Property, as is provided by law, so that each Apartment Unit and its percentage of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation. Rendering the Property to the respective taxing authorities shall be an obligation of each Apartment Unit Owner (Owner Rendition) and in this regard, on or before ten (10) days subsequent to the passage of title from Declarant to an Owner (Owner Rendition Time Period) other than Declarant, each Owner shall render its Apartment Unit with the appropriate taxing authority as is provided by law and therefore, each Apartment Unit shall be taxed/assessed and performed in such a manner, Condominium Unit by Condominium Unit, and not as a whole. In the event any Owner does not comply with the Owner Rendition above within the Owner Rendition Time Period, the

Owner ipso facto appoints Declarant and/or the Association as its attorney-in-fact to perform the Owner Rendition.

2.10 USE RESTRICTIONS. The ownership interest of each Owner in an Apartment Unit and the estate therein, shall be subject to the terms, conditions and provisions hereof, including but not limited to the following:

- (a) The Condominium Units shall be used only for single family residential purposes, as private residences, and, subject to the terms of (k) below, no professional, business or commercial use shall be made of the same, or any portion thereof; provided, however, that Declarant may use any of the Property as sales offices and/or furnished models and for displaying advertising signs and construction purposes at the Premises during the Construction Period. No Owner or resident shall use a Condominium Unit in such a manner so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. Resident as used in this paragraph shall be defined as any occupant of an Apartment Unit, whether or not an Owner.
- (b) The parking spaces assigned to each Apartment Unit shall be used for the parking of operative vehicles only. Such parking spaces shall not be used for a storage area for parts, machinery, inoperative vehicles, or anything judged to be a nuisance by the Association. No drilling, digging, quarrying, or mining operation of any sort shall be permitted on the Premises. No structure of a temporary character, trailer, basement, tent, shack, garden, barn, or other out buildings shall be used on the Premises at any time except as set forth in (d) below;
- (c) No advertising signs (except "For Sale" of not more than five square feet per unit), billboards,

- unsightly objects, or nuisances shall be erected, displaced, or permitted to remain on the Premises.
- (d) The foregoing covenants of subsection (b) and (c) of this paragraph 2.10, shall not apply to the activities of the Association or its appointed representatives. Declarant may maintain, during the Construction Period in or upon such portions of the Apartment Units or the Common Elements, as Declarant determines, such facilities as, in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Apartment Unit, except domesticated dogs, cats or other common household pets (not to exceed a total of two (2) domesticated pets per Apartment Unit) may be kept provided that it is not kept, bred, or maintained for any commercial purposes. All permitted household pets shall be kept inside the Apartment Unit at all times, except that pets may be taken to areas designated by the Association (or Declarant during the Construction Period) if such pets are and remain leashed at all times when outside the Apartment Unit.
- (f) All rubbish, trash, or garbage from a Condominium Unit shall be kept in the areas designated for such purposes by the Association, and shall be regularly removed from the Premises and shall not be allowed to accumulate thereon.
- (g) Outdoor drying of clothes shall not be permitted.
- (h) Without prior written authorization of the Association, no television or radio antennas of any sort shall be placed, allowed, or maintained on any

portion of the exterior of the improvements located on the Property, or any structure situated upon the Property.

- (i) No vehicle shall be parked in driveways or any thoroughfare on the Property. For a period not to exceed forty-eight (48) hours, guests and invitees of Owners may park their vehicles in the surface parking areas within the Common Areas provided for such purpose. Such surface parking areas are not intended for use for parking or storing boats, trailers, camping units, parts, machinery, inoperative or unlicensed cars, or anything judged to be a nuisance by the Association and the Association may insure the proper use of said areas in any legal manner it deems necessary.
- (j) Except in the individual porch areas appurtenant to an Apartment Unit, no planting, transplanting or gardening shall be done, and no fences, hedges or walks shall be erected or maintained upon the Premises, except as installed in accordance with the initial construction of the building or as approved by Declarant during the Construction Period or the Association after the Construction Period.
- (k) Owner shall be permitted to lease his Condominium Unit for transient or hotel purposes. In addition, Owner may lease less than an entire Condominium Unit. The Association additionally may require that all leases of any Condominium Unit must (i) be in writing, and (ii) provide that such leases are specifically subject in all respects to the provisions of the Declaration, By-Laws of the Association, Rules and Regulations of the Property and/or the Association,

and any other rules or regulations valid and existing on the Property (Rules), and further that failure by any tenant or occupant to comply with one or more of the terms and conditions of one or more of the Rules, should be a material default under the lease or other document entitling the tenant or occupant to occupy the Condominium Unit, whereupon the occupant or tenant, as the case may be, shall have ten (10) days after receipt of notice from the Association to cure the default, and in the event the default is not timely cured, the Owner and/or the Association shall be entitled to exercise all procedures against the occupant or tenant, as the case may be, to evict them from the Condominium Unit, including but not limited to, a forceable entry and detainer proceeding. Other than the foregoing, there shall be no restriction on the right of any Owner to lease his Condominium Unit.

- (1) No Owner shall use any of the Property to wash vehicles of any kind.

2.11 CHANGE OF COMMON ELEMENTS. Within eighteen (18) months from the date of filing of this Declaration, the Declarant shall retain and have the power to unilaterally amend the physical layout or makeup of any and all unsold buildings, Condominium Units, the Common Elements (both General and Limited) and to annex additional buildings, and Condominium Units to this Project.

2.12 During the period in which the Declarant may exercise the right reserved to it in Paragraph 2.11 hereof, the Declarant herein reserves unto itself, its successors and assigns an easement to the Common Elements as may be reasonably necessary for the purpose of exercising said rights.

2.13 During the period in which Declarant may exercise the rights reserved to it in Paragraph 2.11 hereof, the Declarant herein reserves unto itself, its successors and assigns the right to establish and construct utility facilities for the purpose of serving any additional units added to the Project. An easement shall exist for the continued use, maintenance and reconstruction of said utility facilities.

2.14 During the period in which the Declarant may exercise the rights reserved to it in Paragraph 2.11 hereof, the Declarant herein reserves unto itself, its successors and assigns, the right to establish access easements, including public roadways as may reasonably be necessary to provide for access to any portion of the project across the Common Elements of the project.

2.15 The Declarant's right to add additional units to the Project shall be exercised in the following manner:

- (a) A supplemental condominium map shall be filed containing all of the information contained in the original condominium map filed herewith and referred to herein, showing the additional units to be added to the Project.
- (b) A supplemental condominium declaration shall be executed by the Declarant or its successors and assigns, submitting the units to be added, to the terms of this Declaration and setting forth the percentage of ownership of the common elements appurtenant to each unit within the project calculated pursuant to the formula contained in Paragraph 2.2(b) herein.

2.16 At the time of recording this supplemental condominium declaration and supplemental condominium map, each unit owners' obligation for payment of maintenance assessments and voting powers in the Paradise Condominium Owner's Association shall be amended to conform with the amended percentage ownership of Common Elements as set forth in Paragraph 2.2(b) hereof.

ARTICLE III

RIGHTS AND OBLIGATIONS OF OWNERSHIP

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

3.2 PARTITION. The Common Elements (both General and Limited) shall be owned in common by all of the Owners of the Condominium Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements other than that as specifically provided for hereinafter at Paragraph 6.2, "Judicial Partition". Nothing contained herein shall be construed as a limitation of the right of partition of a Condominium Unit between the Owners thereof, but such partition shall not effect any other Condominium Unit. Furthermore, such Owners must obtain the prior written approval of all first lien mortgages before effecting such partition.

3.3 EXCLUSIVENESS OF OWNERSHIP. Each Owner shall be entitled to exclusive ownership and possession of his Apartment Unit. Each Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

3.4 SINGLE FAMILY RESIDENTIAL DWELLING. Each Condominium Unit shall be occupied and used by the Owner only as and for a single family residential dwelling for the Owner, his family, his social guests, or his tenants.

3.5 MECHANIC'S AND MATERIALMAN'S LIENS. No labor performed or materials furnished and incorporated in an Apartment Unit, notwithstanding the consent or at the request of the Owner thereof, or his agent or his contractor

or subcontractor, shall be the basis for filing of a lien against the Common Elements owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Apartment Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Apartment Unit at the Owner's request.

3.6 RIGHT OF ENTRY. The Association shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each Apartment Unit 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 for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Apartment Unit or Units.

3.7 OWNER MAINTENANCE. An Owner shall maintain and keep in repair the interior of his own Apartment Unit, including the fixtures thereof, save and except the exterior surfaces of any porch or balcony assigned to his Apartment Unit, which shall be a Common Expense of the Association. All fixtures and equipment installed within the Apartment Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "Utilities") enter the Apartment Unit shall be maintained and kept in repair by the Owner thereof; and an Owner shall be obliged to promptly repair and replace any broken or cracked glass in windows and doors.

3.8 ALTERATION. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. For the purposes hereof, the placing of a waterbed anywhere on the Premises shall be deemed to be such an act as would impair the structural soundness and integrity of the building. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatever upon any of the Common Elements, (Limited or General), save with the written consent or approval in writing by the Board of Managers or its designated agent, which approval shall not be considered until submission to the Board of Managers or its registered Agent of complete plans and specifications showing the nature, kind, shape, size, materials, color and location of the same for all proposed work. During the Construction Period, Declarant shall be the designated agent of the Board of Managers, and Declarant shall have the sole right to approve or reject any plans and specifications submitted for consideration by an Owner.

3.9 RESTRICTION OF OWNERSHIP. As a restriction of the ownership provisions set forth at 1.2(a), "Apartment Unit", hereinbefore, an Owner shall not be deemed to own the unfinished surfaces of the perimeter walls, floors, ceilings and roofs surrounding his Apartment Unit, nor shall such Owner be deemed to own the Utilities running through his Apartment Unit which are utilized for, or serve more than, one Apartment Unit, except as a tenant-in-common with the Owners. An Owner shall be deemed to own and shall maintain the inner, finished surfaces of the perimeter and interior walls, floors, and ceilings, doors, windows, and other such elements consisting of paint, wallpaper, and other such finishing material.

3.10 LIABILITY FOR NEGLIGENT ACTS. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests, invitees, or tenants, and is not covered or paid for by insurance on such Apartment Unit, or the Common Elements, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Apartment Unit is subject, pursuant to Article V hereof.

3.11 SUBJECT TO DECLARATION AND BY-LAWS. Each Owner shall comply strictly with the provisions of this Declaration, the By-Laws of the Association, as hereinafter described in Section 4.1 hereof, and the decisions, resolutions and rules and regulations of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief, or both, maintainable by the Managing Agent or Board of Managers on behalf of the Owners or, in proper case, by an aggrieved Owner.

3.12 DEFAULT NOTICE TO MORTGAGEE. The Association shall give the holders of first lien mortgages prompt notice of any default in the Owners' obligations hereunder not cured within thirty (30) days of such default.

ARTICLE IV

MANAGEMENT AND ADMINISTRATION

4.1 The administration of this Property shall be governed by the By-Laws of the Association, a non-profit association, hereinafter referred to as the "Association". In the event any conflict exists or arises as between the Declaration and the By-Laws, the Declaration shall be controlling. An Owner of a Condominium Unit, upon becoming

an Owner, shall be a member of the Association and shall remain a member for the period that he is an Owner. Declarant shall, during the Construction Period, cause to be formed a Texas non-profit corporation bearing the same name, in which event such non-profit corporation shall adopt the By-Laws of the Association and shall thereafter act and do all things to be done by the Association, according to the By-Laws of the Association. The Association shall be managed by a Board of Managers, duly appointed or elected, pursuant to the terms and conditions of the By-Laws, and by the Managing Agent of the Association as chosen by the Board of Managers, pursuant to the By-Laws. The Board of Managers, as duly appointed or elected at the time of the organizational meeting of the Association shall remain the same during the Construction Period, unless reappointed or elected by Declarant during the Construction Period. Vacancies occurring on such Board of Managers during the Construction Period by death or resignation, should be replaced through the appointment or election by Declarant, at Declarant's sole discretion.

4.2. SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT.

Every Owner and the Declarant shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following limitations, restrictions and provisions:

- (a) The right of the Association to publish rules and regulations governing use of the Common Areas and the improvements and facilities located thereon, and to establish and enforce penalties for infractions thereof;
- (b) The right of the Association to charge reasonable admission, rental and other fees to Owners or guests, for the use of any facilities, including, but not limited to, meeting rooms, saunas, hot tubs or racquet ball courts, situated upon the Common Area; without limiting the generality of the foregoing;
- (c) The right of the Association to charge reasonable fees for the use of facilities within the Common Area if such facilities are not used by all members equally;

- (d) The right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in such properties shall be subordinate to the rights of the Owners hereunder and in no event shall any such Mortgagee have the right to terminate the Condominium Regime established by this Declaration; and provided such loan or mortgage has been approved by three-fourths (3/4) vote of the quorum of owners, present at a meeting of the Association, specifically called for the purpose of approving any such loan or mortgage;
- (e) The right and duty of the Association to suspend the voting rights and the right to the use of the recreational facilities by an Owner for any period during which any Assessment against the Owner's Condominium Unit remains unpaid; and for a period not to exceed thirty (30) days from any infraction of this Declaration, the By-Laws and the Rules and Regulations promulgated by the Association.
- (f) The right of Declarant during the Construction Period, or the Association after the Construction Period, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for the purposes and subject to the conditions of such agency, authority, or utility. No such dedication or transfer after the Construction Period shall be effective unless approved by three-fourths (3/4) vote of the quorum of Owners, present at a meeting of the Association, specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Managers, reflecting such vote of the Owners, agreeing to such dedication, or transfer, has been duly recorded in the Records of Gunnison County, Colorado. However, without Owner approval, the Association may grant such easements, licenses or profits so long as they do not interfere with the intended use of the Property;
- (g) The right of the Association to adopt, implement and maintain a private security system for the premises consistent with applicable laws;
- (h) The right of the Association to establish rules and regulations governing traffic within the Common Area, and to establish sanctions for any violation or violations of such rules and regulations;
- (i) The right of the Association to regulate noise within the Premises, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise;
- (j) The right of the Association to control the visual attractiveness of the Property, including but not limited to the following: (1) to control the balconies and the color thereof, (2) the right to require Owners to eliminate objects which are visible from the Common Area which detract from the visual attractiveness of the Property, and (3) the right to require Owners to install white lined drapes, white lined shades, white lined shutters, or any other type of white lined window covering.

4.2 INSURANCE. The Board of Managers shall obtain insurance for the Property as follows, in such amounts as the Board of Managers deems appropriate:

- (a) Insurance on the buildings (including Apartment Units), Common Elements and Limited Common Elements against loss from damage by fire or by any and all risks insured by standard extended coverage policies in use in the State of Colo., with such endorsements as the Board of Managers deems advisable, in amounts sufficient to prevent the Association from being a co-insurer within the terms of such policies, but in any event in an amount not less than the full insurable replacement cost thereof. The full insurable replacement cost of the buildings (including all Apartment Units, Common Elements and Limited Common Elements) shall be determined annually by the Board of Managers, who may obtain an appraisal in making such determination, the cost of which shall be paid from the Maintenance Fund.
- (b) Insurance on all buildings, including Apartment Units, against all loss or damage from explosion of boilers, heating apparatus, pressure vessels, pipes installed, in, on, and about the buildings.
- (c) Comprehensive General Liability insurance covering the entire Premises, in amounts not less than \$100,000.00 per person and \$300,000.00 per accident and \$1,000,000.00 Property damage suffered by the Public or any Owner, the family, tenant, agent, employee, or other invitee of the Owner, occurring in, on, or about the Project, or upon, in, or about the private driveways, roadways or walkways and passageways on, or adjoining the Project. Any policy obtained pursuant to this subsection (c) shall contain a cost liability endorsement whereby the rights of the named insured shall have prejudice, his, her or their actions against another named insured.
- (d) Since Workmen's Compensation insurance may be necessary to comply with applicable laws, Employer's Liability Insurance, Fidelity Bonds (minimum coverage of \$25,000.00 per occurrence) indemnifying the Association, the Board of Managers, and Owners from loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or any other person handling funds of the Association.
- (e) Directors and Officers Liability insurance where the directors and officers of the Association against any liability asserted against any such party, or incurred by such party in such capacity, or rising out of such party's status as a director or officer.
- (g) Such other insurance in such reasonable amounts as the Board of Managers shall deem desirable.

All insurance provided for in this Section shall be effected with responsible insurers authorized to do business in the State of Texas. All such policies of insurance shall

name as the insured, the Association, as Trustee for each owner in accordance with such Owner's percentage interest and all mortgagees, all as their respective interest may appear. All such policies should be without contribution with regard to any other policies of insurance carried individually by an Owner and shall provide that such policy shall not be terminated for any cause without at least thirty (30) days prior written notice to the Association and each mortgagee. If possible, all policies of insurance of the character described in this Section shall contain an endorsement extending coverage to include the payment of the Common Areas with respect to Apartments damaged during the period of reconstruction thereof.

Proceeds of all insurance policies owned by the Association shall be received by the Association, held in a separate account, and distributed to the Owners, their mortgagees and the Association (subject to the provisions of the Declaration, the Act and the By-Laws) as their interest may appear. Each Owner irrevocably designates the Board of Managers as attorney-in-fact for handling of the proceeds of such insurance, with such attorney-in-fact administering and distributing such proceeds as is also provided in this Declaration. The Managing Agent on the Board of Managers shall, upon request of any first mortgagee, furnish a certified copy of each Blanket Policy and a separate certificate identifying the interest of the Mortgagor and the Mortgagee. Exclusive authority to adjust losses under policies hereafter enforced in the Project shall be vested in the Board of Managers or its authorized representatives. In no event shall the insurance coverage obtained and maintained by the Board of Managers hereunder be brought into contribution with insurance purchased by the individual Owners or their Mortgagees.

It will be the individual responsibility of each Owner at his own expense, to provide as he sees fit, liability insurance, theft insurance, insurance on any additions or betterments made by such Owner to his Apartment Unit, and other insurance covering personal property damage and loss, provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount of which the Board of Managers, on behalf of all the Owners, may realize under any insurance policy which the Board of Managers may have in force on the Project at any particular time.

4.4 ACCOUNTING AND FINANCIAL REPORTING PROCEDUES. The Board of Managers, or the Managing Agent, shall keep, or cause to be kept, detailed books of account of the receipts and disbursements affecting the Common Elements and their administration, (including records as to delinquent Assessments), and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Association. Both the book and vouchers accrediting the entries made thereon shall be available for examination by the Owners and their respective mortgagees at reasonable hours on business days. The annual financial statement, audited at least once a year by an auditor outside of the control of Declarant, which includes a balance sheet, statement of revenue and expenses, and a listing of delinquent assessments, prepared on an accrual basis, in accordance with generally accepted accounting principals shall be furnished to all Owners and first mortgagees within ninety (90) days after the end of each fiscal year subsequent to the Construction Period.

ARTICLE V

ASSESSMENTS

5.1 ASSESSMENTS. Each Owner covenants and agrees to pay to the Association (a) the Maintenance Assessment; (b) the Special Assessment; (c) and special charges which shall be

fixed, established, secured and collected pursuant to this Declaration, by the Board of Managers or Managing Agent of the Association to meet the Common Expenses, (which Assessments and charges together with interest, collection costs and reasonable attorney's fees shall be referred to herein as the "Assessment" or "Assessments"). Each Assessment shall be a charge on the applicable Condominium Unit and shall be secured by a continuing lien on such Condominium Unit. Each such Assessment shall be the personal obligation of the Owner of the applicable Condominium Unit at the time such Assessment shall become due. The personal obligation of an Owner for delinquent Assessments shall not pass to a successor Owner in the absence of express written assumption thereof by such successor Owner. If more than one person is the Owner of a Condominium Unit at the time such Assessment shall become due, the personal obligation of such persons with respect to such Assessment shall be joint and several.

5.2 MAINTENANCE ASSESSMENT. The Association shall impose a Maintenance Assessment with respect to the Project for Common Expenses including, without limitations (a) the administration of the Project, (b) landscaping, maintenance, insurance, repair, operation and other expenses, (c) other expenses of the Association with respect to the Project, (d) the Replacement Reserve Fund hereinafter defined, and (e) water and sewer charges. The Maintenance Assessment shall be assessed and paid monthly in accordance with Section 5.4. No Owner is or shall be exempt from such obligation to make such payment by waiver of use of the Common Areas, or any portion thereof, or because of any restriction of such use pursuant to this Declaration, the By-Laws or the Rules and Regulations, or for any other reason. The Association, shall not be subject to payment of a Maintenance Agreement.

5.3 DECLARANT'S OBLIGATIONS WITH RESPECT TO MAINTENANCE EXPENSES DURING THE CONSTRUCTION PERIOD. Recognizing that the cost of administration and maintenance of the Project is related to the use of the Common Areas and the number of Condominium Units which are occupied, until the end of the Construction Period, the Declarant shall pay to the Association, in lieu of any Assessment with respect to all Condominium Units wherein the Declarant is Owner, the amount, if any, by which (x) the Actual Operating Expenses, herein defined, actually incurred for any fiscal year or part thereof of the Association exceeds (y) the aggregate of the Maintenance Assessments payable during such period by Owners other than Declarant, less any portion thereof that is deposited, or budgeted for deposit, in the Replacement Reserve Fund during such period. If the aggregate Maintenance Assessment collected from Owners other than the Declarant, less any portion thereof deposited or budgeted for deposit in the Replacement Reserve Fund, exceeds the Actual Operating Expenses incurred for such period, then, within a reasonable time after the expiration of such period, the Association shall refund an amount equal to such excess to the Owners who shall have paid such Maintenance Assessment, in proportion to their respective contributions. The term "Actual Operating Expenses" shall mean those expenses reasonably necessary for the normal maintenance and operation of the Project but shall not include (i) capital expenditures; (ii) amounts paid into the Replacement Reserve Fund, (iii) prepaid items, (iv) inventory items, or (v) similar expenses that are attributable to periods after such fiscal year or part thereof. Following the end of the Construction Period, Declarant shall pay Assessments on each unsold Condominium Units, if any, in the same amount and manner as any other Owner.

3.1 BUDGETS; PAYMENT OF MAINTENANCE ASSESSMENT;

REPLACEMENT RESERVE FUND. Upon the recordation of this Declaration, the initial Board of Managers shall meet and establish a budget for the Project for that portion of the calendar year then remaining, which budget shall set forth the Board of Manager's reasonable estimate of all expenses which the Association will incur in such operation and maintenance of the Project for the remainder of such year. Such budget, and all successive budgets, shall include a reasonable allowance for contingencies and any operating deficits for prior years and all budgets shall establish a reasonable reserve fund, herein called the Replacement Reserve Fund, for repairs and replacements to the Common Areas, including those that must be replaced on a periodic basis. Thereafter, annually, in the last calendar quarter of each year, the Board of Managers shall meet and establish such a budget for the next succeeding calendar year. Copies of each such budget shall be available at the Project for inspection by the Owners. After each such budget is adopted by the Board of Managers, the Board of Managers shall determine (i) the Maintenance Assessment for the calendar year in question and (ii) the portion thereof allocable to each Condominium Unit. The Maintenance Assessment shall be allocated to each Condominium Unit and the Owner thereof in the proportion that the fractional interest of such Condominium Unit bears to the aggregate fractional interest of all Condominium Units. Each Owner shall be obligated to pay monthly, in advance, on the date determined by the Association, one-twelfth (1/12) of (a) the portion of the Maintenance Assessment so allocated to such Owner. Prior to the end of the Construction Period, the Board of Managers may establish the monthly Maintenance Assessment for each Condominium Unit and adjust such assessment retroactively to account for Condominium Units conveyed by Declarant during a given month. Such

adjustment shall be made by the Board of Managers monthly or on such other periodic basis as the Board of Managers deems appropriate.

5.5 DATE OF COMMENCEMENT OF MAINTENANCE ASSESSMENT;
UNIFORM RULES: Maintenance Assessments shall commence on the execution and delivery of the deed from Declarant to the first Condominium Unit to an Owner other than Declarant. The Maintenance Assessment for the first calendar month shall be prorated from the date of execution and delivery of the deed to the end of the month, for each new purchasing Owner. An amount equal to two (2) months Maintenance Assessment ("Reserve Assessment") shall upon closing of the purchase of each Condominium Unit, be paid by the purchasing Owner into an escrow account. Such Reserve Assessment funds shall be used solely for emergency funds and shall be replenished immediately upon any use by Special Assessments as herein-after defined.

5.6 SPECIAL ASSESSMENTS. If the Board of Managers at any time or from time to time determines that the Maintenance Assessment assessed for any period is insufficient to provide for the continued operation of the Project, the maintenance of the Common Areas, or for other expenditures the Board of Managers is authorized to make under this Declaration, then the Board of Managers shall have the authority to levy such Special Assessments ("Special Assessments") as it shall deem necessary to provide for such continued operation, maintenance and other expenditures. Without limiting the generality of the foregoing, such Special Assessments may be assessed because of casualty or other loss to any part of the Project; to make up for any deficiencies caused by nonpayment of Maintenance Assessments; or for enforcement of the Declaration,

By-Laws, Rules and Regulations and/or Restrictions. No Special Assessment shall be effective until the same is approved by Members holding at least a majority of the votes in the Association in writing at a given time or by Members holding a majority of the votes at any regular or special meeting of the Members. Special Assessments shall be payable (and the payment thereof may be enforced) in the manner herein specified for the payment and enforcement of the Maintenance Assessment or otherwise as provided in the resolution authorizing such Special Assessment.

5.7 PAYMENT OF ASSESSMENTS. The monthly Maintenance Assessment assessed against each Condominium Unit shall be due and payable in advance, on the first day of each calendar month during the year for which such Maintenance Assessment has been assessed. Special Assessments shall be payable on the first (1st) day of the first month after assessment thereof or otherwise as set forth in the resolution authorizing such Special Assessment. Any such amount not paid and received by the tenth (10th) day subsequent to the date it was due, inclusive of the date due, shall be deemed delinquent. At the Board of Manager's option such Delinquent payment shall (a) bear interest at any rate up to the highest non-usurious rate permitted by law from the date originally due until paid, and (b) be subject to a late charge to cover collection costs at a rate to be set by the Board of Managers if and to the extent legally permissible. If any Assessment shall remain Delinquent for fifteen (15) days, at the Board of Manager's election, the Assessments due from the delinquent Owner for the next twelve months shall be accelerated and shall become due and payable from the fifteenth (15th) day of such month until paid. At the Board of Manager's option, such accelerated Assessments shall bear interest at any rate established by the Board of Managers up to the highest non-usurious rate permitted by law. For purpose of the preceding sentence, if the actual monthly Maintenance Assessment for

the next twelve months is not then known, the monthly Maintenance Assessment for the next twelve months shall be deemed to be the same amount per month as the then applicable monthly Maintenance Assessment. If, after the Maintenance Assessment for the next twelve months has been accelerated by the Board of Managers, satisfactory payments of the Assessment and accrued interest are paid, the Board of Managers may allow such Assessment to again be paid on a monthly basis.

5.8 LIEN; REMEDIES. In order to secure payment of the Assessments with respect to each Condominium Unit, a vendor's lien and superior title to such Condominium Unit shall be and is hereby reserved to the Association, which Lien may be foreclosed either through appropriate judicial proceedings by the Association or by public sale without judicial proceedings. Without limitation, each Owner, by virtue of acceptance or ownership of a Condominium Unit, irrevocably grants to the Association a (i) power of sale so that the lien securing payment of the unpaid sums required to be paid by this Declaration may be foreclosed at public sale upon compliance with any applicable statutes of the State of Colorado, as the same may be amended from time to time; (ii) suit to recover a money judgment for unpaid Assessments which shall be maintainable without foreclosing or waiving the lien securing same; (iii) the right to publish any Delinquent Owner's name and other pertinent information in any newsletter or other document, including but not limited to the county records of Gunnison County, Colorado. Each Owner, by virtue of acceptance or ownership of a Condominium Unit, hereby expressly vests in the Association, and its agents, the right and power to bring all actions against the Owner personally for the collection of unpaid Assessments as a debt. The vendor's lien and superior title herein reserved shall be subordinate in all respects to any first lien

mortgage. In addition to the remedy of foreclosure of the lien hereby retained, in the event of nonpayment by any Owner of such Owner's Assessment, the Association may, acting through the Board of Managers or Managing Agent of the Association, upon ten (10) days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, pursue any or all of the following remedies:

5.8.(1) The Association may restrict the rights of such nonpaying Owner to use the Common Areas in such manner as the Association deems fit or appropriate; provided the Association may not deny access to the Condominium Unit from the public streets;

5.8.(2) The Association may cut off any utilities furnished through use of any part of the Common Areas to the Condominium Unit owned by such nonpaying Owner; and

5.8.(3) The Association may, upon ten (10) days' written notice to the nonpaying Owner, purchase from such nonpaying Owner (and for this purpose each Owner hereby grants to the Association an option to so purchase) such nonpaying Owner's Condominium Unit at a purchase price equal to the price at which such Owner originally purchased the Condominium Unit less the reasonable expenses incurred by the Association in purchasing the Condominium Unit and less the amount of unpaid portion of the Assessment giving rise to such option and less the balance of any debt secured by any mortgage encumbering such Condominium Unit. The option set forth in this subsection is expressly subordinate to any Mortgage covering such nonpaying Owner's Condominium Unit.

5.9 MAINTENANCE ASSESSMENT FUND. The proceeds of the Maintenance Assessment collected by the Association shall be paid into a Fund ("Maintenance Assessment Fund") to be held by the Association for the use and benefit, directly or

indirectly, of the Project. Such Maintenance Assessment Fund may be expended by the Board of Managers for any purposes set forth hereinabove.

5.10 SPECIAL ASSESSMENT FUND. The proceeds of any Special Assessment collected by the Association shall be paid into a Special Assessment Fund to be held by the Association for the uses and purposes set forth in the resolution creating such Special Assessment, or, the Board of Managers, in its sole discretion if not prohibited by such Resolution, may deposit any or all such proceeds in the Maintenance Assessment Fund.

5.11 INSURANCE ASSESSMENT. Upon the sale of each Condominium Unit by Declarant to each purchaser Owner, each such Owner shall pay to the Association an amount of money equal to thirteen (13) months of insurance premiums allocable to such Owner as determined by the Board of Managers. At completion of the Construction Period, Declarant shall pay to the Association an amount of money equal to thirteen (13) months of insurance premiums allocable to the Condominium Units which have not been sold to any such purchaser Owner. The payment of the amounts herein described shall be enforced in the manner specified in Section 5.8. In the event of a sale of a Condominium Unit, no refund shall be made of any Insurance Assessment. The Insurance Assessment shall be prorated as may be agreed between the seller and purchaser of such Condominium Unit.

5.12 STATEMENT OF ASSESSMENTS. Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Condominium Unit, the Association, by its Managing Agent or Board of Managers, shall issue a written statement setting forth the unpaid Assessments, if any, with respect to the Condominium Unit, the amount of the current monthly Assessments and the date that such Assessment became due, credit for advance payment, prepaid items, (including, but not listed to, Reserve

Assessments", which shall be conclusive and incumbant 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 twenty (20) days, all unpaid Assessments which become due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

Upon the sale or conveyance of a Condominium Unit, all unpaid Assessments against the Owner of his prorata share of the Assessments shall first be paid out of the sales price.

ARTICLE VI

DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS

6.1 DESTRUCTION OR OBSOLESCENCE. This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property upon its destruction or obsolescence.

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 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 or its successor non-profit corporation, their true and lawful attorney in their name, place, and stead, for the purpose of dealing with the Property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its Board of Managers, 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 a Condominium Unit Owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same conditions in which it existed prior to the damage, with

each Apartment Unit and the Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements unless the Owners and 90% of the first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) Subject to the Condominium Act of the State of Colorado and this Declaration, 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.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-six and two-thirds percent (66-2/3%) of all of the principal structures erected upon the land, as determined by the Board of Managers, 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 Condominium Units. Such deficiency assessment shall be a common expense made pro rata according to each Owner's percentage interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a Lien on his Condominium Unit and may be enforced and collected as is provided in Article V hereof. 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 of the 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 proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in following order:

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

- (5) The balance remaining; if any, shall be paid to the Delinquent Condominium Unit Owner.
- (c) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than sixty-six and two-thirds percent (66-2/3%) of the principal structures erected upon the Land, as determined by the Board of Managers, and if the Owners representing the aggregate ownership of sixty-six and two-thirds percent (66-2/3%) of the Common Elements or more, do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, which plan must have the approval or consent of 90% of the first mortgagees, 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 Plans 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 Apartment Owner's interest based upon each Owner's interest in the Common Elements, and such divided proceeds shall be paid into twenty-five (25) separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the number of the Apartment Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any account to another, toward the full payment of the lien of any first mortgage against the Condominium Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each Condominium Unit Owner's percentage interest in the 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 subparagraph (b)(1) through (5) of this heading, "6.1. DESTRUCTION OR OBSOLESCENCE."
- (d) If the insurance proceeds are inadequate for repair of the damage which is deemed in excess of sixty-six and two-thirds percent (66-2/3%) and the Owners unanimously adopt a plan for reconstruction, which plan has the approval of ninety percent (90%) of the 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 Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association

shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in paragraph 5.8. LIENS; REMEDIES. herein. 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 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 proceeds derived from 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 subparagraph (b) (1) through (5) of this heading, paragraph "6.1. DESTRUCTION OR OBSOLESCENCE".

- (e) The Owners representing an aggregate ownership interest in excess of three-fourths (3/4) of the Common Elements or more, may agree that the Common Elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the Owners as Common Expenses.
- (f) Subject to the provisions for unanimity of the Owners through Colorado Revised Statutes, Sections 38-33-101 et seq., (1973, as amended), to achieve a Waiver of the requirements hereby created thereby regrouping or merging these perspective ownerships, the Owners representing an aggregate ownership interest in excess of three-fourths (3/4) of the Common Elements, or more, may agree that the Property is obsolete and that the same should be sold. 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 authorized Officers, 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 Plans and the By-Laws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the Common Elements (unless decided otherwise by unanimous vote of the Owners), and such apportioned proceeds shall be paid into twenty-five (25) separate accounts, each such accounts representing one Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Apartment 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 funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in subparagraph (b) (1) through (5) of this Article.

Notwithstanding anything hereinabove to the contrary, the first lien mortgagees of the Condominium Units, if any, shall not be pre-empted from any distributions of insurance proceeds as provided for above and the Association shall notify in writing all mortgagees regarding any damage to the Property in excess of Ten Thousand (\$10,000.00) Dollars and any one particular mortgagee should an Apartment Unit upon which it possesses a lien is damaged in excess of One Thousand Dollars (\$1,000.00).

6.2 JUDICIAL PARTITION. There shall be no judicial partition of the Project or any part thereof, nor shall Declarant or any person acquiring any interest in the Project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in paragraph 6.1 hereof in the case of damage or destruction or unless the Property has been removed from the provisions of the Colorado Condominium Act.

6.3 EMINENT DOMAIN. In the event of any taking of any Condominium Unit, by eminent domain, or private purchase in lieu thereof, the Owner of the Condominium Unit and his mortgagee shall be entitled to receive written notice within a reasonable period of time regarding the intent of such taking and the award for such taking as their interests may appear and, after acceptance thereof, if such Owner shall vacate his Unit by virtue of such taking, he and his mortgagee shall be divested of all interest in his Condominium Unit and all rights, titles and interests appurtenant thereto and shall be relieved of any obligations accruing or appertaining to such ownership thereafter.

Accordingly, under no circumstance shall the first lien mortgagee be pre-empted from distributions derived from condemnation as its interest shall appear.

ARTICLE VII

RIGHT OF FIRST REFUSAL

7.1 SALE OR LEASE, RIGHT OF REFUSAL. In the event any Owner of a Condominium Unit shall wish to resell the same or

BOOK 558 PAGE 608

lease for a term in excess of one (1) year the same, and shall have received a bona fide offer there for from a prospective purchaser or tenant, the Managing Agent shall be given written notice thereof together with an executed copy of such offer and the terms thereof. The Association, through the Board of Managers, or a person named by them shall have the right to purchase or lease the subject Condominium Unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, and a matching down payment or deposit is provided to the selling or leasing Owner during the fifteen (15) day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any Owner shall attempt to sell or lease for a term in excess of one (1) year his Condominium Unit without affording to the other Owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

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

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

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

7.2 MORTGAGES NOT AFFECTED BY RIGHT OF FIRST REFUSAL.

In the event of any default on the part of any owner under any first mortgage made in good faith and for value, which entitled the holder thereof to foreclose same, any sale, under such foreclosure, including delivery of a deed to the mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Paragraph 7.1 and the purchaser (or grantee under such deed in lieu of foreclosure) of such Condominium Unit shall be thereupon and thereafter subject to the provisions of this Declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the mortgage, or its nominee, the same holder or nominee may thereafter sell and convey the Condominium Unit free and clear of the provisions of Paragraph 7.1, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant, or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws, shall not be subject to the provisions of Paragraph 7.1.

If an Owner of a Condominium Unit can establish to the satisfaction of the Board of Managers that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Paragraph 7.1.

7.3 CERTIFICATE OF SATISFACTION OF RIGHT OF FIRST REFUSAL.

Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any Condominium Unit, the Board of Managers shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

BOOK 603 PAGE 859

- (a) With respect to a proposed lease or sale under Paragraph 7.1, that proper notice was given by the selling or leasing Owner and that the remaining Owners did not elect to exercise their option to purchase or lease;
- (b) With respect to a deed to a mortgagee or its nominee in lieu of foreclosure, and a deed from such mortgagee or its nominee, pursuant to Paragraph 7.2, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 7.1.
- (c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of Paragraph 7.1; such a certificate shall be conclusive evidence of the facts contained therein.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 AMENDMENT. Subject to the provisions of Paragraph 2.11 and 8.2 hereof, neither this Declaration nor the Condominium Regime and percentage interests of the Owners created hereby, shall be vacated, waived, revoked, abandoned or terminated, nor shall the pro rata percentage of an Owner in the Common Elements nor the dimensions of any Condominium Unit be changed, nor shall the Common Elements be abandoned, partitioned, subdivided, encumbered, sold or transferred, nor shall any other provision of this Declaration be amended unless the Owners representing an aggregate ownership interest in excess of three-fourths (3/4) of the Common Elements upon written approval of all first lien mortgagees, agree to such action, unless such action is allowed by a lesser percentage as specified in this Declaration, or such action requires a greater percentage under the Act. However, no amendment shall affect Declarant's right to exercise the duties and functions of the Board of Managers as allowed by Paragraph 4.1 hereof or alter or amend the rights given to Declarant in Paragraph 2.11 hereof.

8.2 OWNERSHIP OF COMMON PERSONAL PROPERTY. Upon termination of the Construction Period as defined herein Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the entire premises and furnished by Declarant, which property is intended for the common use and enjoyment

of the Condominium Unit Owners and occupants. No Owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the Owner's termination of possession of his Condominium Unit.

8.3 CHANGE IN DOCUMENTS. The holder of any mortgage covering any of the Condominium Units shall be entitled to a written notification from the Association thirty (30) days prior to the effective date of any change in the condominium documents, which requirement, as to the number of days only, can be waived in writing by the holder of any mortgage.

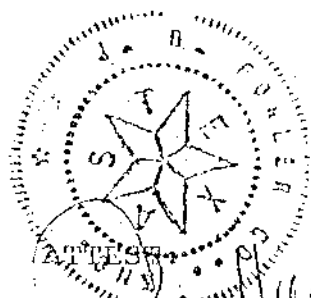
8.4 NOTICE. All notices, demands or other notices intended to be served upon an Owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such Owner in care of the apartment number and building address of such Owner. All notices, demands or other notices intended to be served upon the Managing Agent or the Board of Managers of the Association or the Association, shall be sent by ordinary or certified mail, postage prepaid, to the Association, c/o Paradise Condominium, 40 Hunter Hill Road, Mount Crested Butte, Colorado, until such address is changed by a notice of address change duly recorded in the Gunnison County Records.

8.5 INVALIDATION OF PARTS. 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.

8.6 COLORADO CONDOMINIUM ACT. 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.

8.7 GENDER. That 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.

IN WITNESS WHEREOF, Declarant by its corporate officers, has duly executed this Declaration on this the 24th day of September, 1980.



James H. Westmoreland
James H. Westmoreland
Assistant Secretary

Butte View, Ltd.
a Texas Limited Partnership

By: J. B. Fowler Co., Inc.
a Texas Corporation,
General Partner

By *James B. Fowler*
James B. Fowler
President

Bluebonnet, Ltd.
a Texas Limited Partnership

By: J. B. Fowler Co., Inc.
a Texas Corporation,
General Partner

By *James B. Fowler*
James B. Fowler
President



James H. Westmoreland
James H. Westmoreland
Assistant Secretary

THE STATE OF COLORADO)
)
COUNTY OF GUNNISON)

BEFORE ME, the undersigned authority, on this day personally appeared James B. Fowler, president, and James H. Westmoreland, assistant secretary, of J. B. Fowler Co., Inc., a Texas Corporation, as General Partner of Butte View, Ltd., a Texas Limited Partnership, and Bluebonnet, Ltd., a Texas Limited Partnership, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

RECEIVED UNDER MY HAND AND SEAL OF OFFICE on this the 24th day of September, 1980.



Janie Michele Krueger
NOTARY PUBLIC IN AND FOR
GUNNISON COUNTY, COLORADO
Name: Janie Michele Krueger
My commission expires: 1/8/83

EXHIBIT "A"

The legal description of the real property laid out and platted as Paradise Condominium shown on the attached plat is:

PARCEL ONE: TOWNSHIP 13 SOUTH, RANGE 86 WEST, 6th P.M.

Section 26: Part of the N $\frac{1}{2}$ SE $\frac{1}{4}$ more particularly described as follows: Beginning at a point on the easterly line of Hunter Hill Road in Chalet Village Addition No. 3, as shown and located by the Replat of said subdivision filed for record on September 14, 1964, from which point the E $\frac{1}{2}$ corner of said Section 26 bears North 69°31' East 1,290.23 feet; thence South 1°55' West along the easterly line of said road 23 feet; thence along the easterly line of said road and along a curve to the right whose radius is 1,007 feet and whose long chord bears South 4°58' West 107.16 feet an arc distance of 107.48 feet; thence South 67° East 238 feet; thence North 37°25' East 81 feet; thence along a curve to the right whose radius is 100 feet and whose long chord bears North 73° East 116.38 feet an arc distance of 124.21 feet; thence North 71°25' West 390 feet to the point of beginning.

Town of Mt. Crested Butte, County of Gunnison, State of Colorado

PARCEL TWO: TOWNSHIP 13 SOUTH, RANGE 86 WEST, 6th P.M.

Section 26: A tract of land located in the SE $\frac{1}{4}$ of said section, more particularly described as follows: Beginning at a point on the easterly line of Hunter Hill Road in Chalet Village Addition No. 3, as shown by the Replat of Chalet Village Addition No. 3 filed for record September 14, 1964, from which point the E $\frac{1}{2}$ corner of said Section 26 bears North 69°31' East 1,290.23 feet; thence South 1°55' West along the easterly line of said road a distance of 23 feet; thence along said easterly line and along a curve to the right whose radius is 1,007 feet and whose long chord bears South 4°58' West 107.16 feet an arc distance of 107.48 feet to the TRUE POINT OF BEGINNING; thence South 67° East 238 feet; thence South 37°25' West 106 feet; thence North 74°36' West 187.78 feet to said easterly line of Hunter Hill Road; thence northerly along said easterly line of Hunter Hill Road along a curve to the left whose radius is 1,007 feet an arc distance of 130.06 feet to the TRUE POINT OF BEGINNING;

Town of Mt. Crested Butte, County of Gunnison, State of Colorado

EXHIBIT "B"

BUILDING A

<u>UNIT</u>	<u>SQUARE FOOT</u>	<u>PERCENTAGE OF OWNERSHIP</u>
101	982.65	2.94
102	988.26	2.96
103	987.45	2.96
104	982.65	2.94
201	1,711.37	5.12
202	1,739.80	5.21
203	1,732.15	5.19
204	1,708.10	5.11

BUILDING C

105	980.73	2.94
106	990.72	2.96
107	989.11	2.96
108	989.03	2.96
205	1,764.72	5.28
206	1,769.92	5.30
207	1,769.92	5.30
208	1,734.65	5.19

BUILDING D

109	978.27	2.93
110	990.25	2.96
111	987.46	2.96
112	987.05	2.96
209	1,764.13	5.28
210	1,775.32	5.32
211	1,777.66	5.32
212	1,745.57	5.23

Employee Unit D-1

574.94		1.72
33,401.88	sq. ft.	100.00%