

THIS WAS RECORDED THE 7 DAY OF Nov. A. D. 1979 AT 2:00 P. M. BY Joanne M. Reitinger  
 RECEPTION No. 346251 BY *Joanne M. Reitinger* DEPUTY

CONDOMINIUM DECLARATION

FOR

JASON CONDOMINIUMS

This Condominium Declaration, made this 31<sup>st</sup> day of October, 1979, at Gunnison County, Colorado, by East River Development, Inc., a Colorado corporation.

I

STATEMENT OF INTENT AND PURPOSE

1.1 Intention: Declarant is the owner of the real property set forth on attached Exhibit "A" and incorporated herein by reference and intends to provide for condominium ownership of the project under the Condominium Ownership Act of the State of Colorado.

1.2 Purpose: To accomplish this purpose, Declarant executes this Condominium Declaration for Jason Condominiums to define the character, duration, rights, duties, obligations and limitations of condominium ownership in the project.

1.3 Declaration: Declarant hereby declares that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the project and shall be binding and accrue to the Declarant, its successors and assigns, and any person acquiring and holding an interest in the project, their grantees, successors, heirs, executors, administrators or assigns.

II

DEFINITIONS

2.1 Declarant means East River Development, Inc., its successors and assigns.

2.2 Real Property means the real property in the County of Gunnison, State of Colorado, described in the attached Exhibit "A," incorporated herein by reference.

2.3 Building means the building constructed on the real property.

2.4 Project means the real property and the building and all improvements and structures thereon, together with all rights, easements and appurtenances belonging thereto.

2.5 Condominium Map means the condominium map for Jason Condominiums filed November 7, 1979, bearing reception number 346250 of the records of Gunnison County, Colorado.

2.6 Unit means an individual air space unit, consisting of enclosed rooms occupying part of the building and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space as said boundaries are shown on the Condominium Map, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a unit insofar as they are necessary for the support or full use and enjoyment of another unit: bearing walls, floors, ceilings and roofs except the interior surfaces thereof, foundations, space heating equipment and central water heating equipment, if any, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located 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.

2.7 Condominium Unit means a unit, together with an undivided interest in the general common elements and the limited common elements appurtenant thereto.

2.8 Owner means a person, firm, corporation, partnership, association or other entity owning a condominium unit.

2.9 Common Elements means all of the project except the units.

2.10 Limited Common Elements means any common element designated and reserved for the exclusive use by the owner of a particular condominium unit or units. Any balcony, terrace, porch, patio, yard, parking space 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 unit or units.

2.11 General Common Elements means all common elements except limited common elements.

2.12 Association means Jason Condominiums Homeowners Association, a Colorado partnership, its successors and assigns.

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

2.14 Common Expenses mean and include:

- A. Expenses declared common expenses by provisions of this Declaration;
- B. Expenses of administration, operation and management, maintenance, repair or replacement of the general common elements;
- C. All sums lawfully assessed against the general common elements by the Association; and
- D. Expenses unanimously agreed upon as common expenses by the owners.

### III

#### ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

The project is hereby divided into four (4) condominium units as follows:

3.1 Four fee simple estates consisting of four separately designated condominium units, together with an undivided fee simple interest in the general common elements, as set forth on attached Exhibit "B," incorporated herein by reference.

3.2 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 for the condominium unit of such owner.

### IV

#### CONDOMINIUM MAP

4.1 The Condominium Map shall be filed for record prior to the first conveyance of a condominium unit. Such map shall consist of and set forth the following:

- A. The legal description of the surface of the real property;
- B. The linear measurements and locations, with reference to the exterior boundaries of the land, of the buildings and all other improvements built or to be built on said real property;

- C. The elevation plans of the buildings;
- D. The elevations of the unfinished interior surfaces of the floors and ceilings as established on a datum plane, the linear measurements showing the thickness of the perimeter walls of each unit;
- E. The floor plans which shall depict the boundaries (perimeter) of the condominium units, the unit designations and the linear measurements of each unit;
- F. The appropriate designation and identification of all general common elements and limited common elements.

4.2 As a part of the Condominium Map, there shall be filed for record a certificate of a registered professional engineer or 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.

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

#### V

##### DESCRIPTIONS OF CONDOMINIUM UNIT

5.1 Every instrument affecting the title to a condominium unit may describe that condominium unit by its identifying unit number with appropriate reference to the Condominium Map and this Declaration.

5.2 Such method of description shall be as follows:

Condominium Unit \_\_\_\_\_, Jason Condominiums, according to the Condominium Map thereof and the Condominium Declaration pertaining thereto recorded in Book \_\_\_\_\_ at page \_\_\_\_\_ of the records of Gunnison County.

5.3 Such description shall be construed to describe the unit, together with the appurtenant undivided interest in the general common elements, the exclusive use of any limited common elements and all rights and limitations of ownership as set forth in this Declaration.

#### VI

##### TITLE

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.

#### VII

##### TERM OF OWNERSHIP

The separate estate of an owner to a condominium unit as herein created shall continue until revoked in the manner contained in this Condominium Declaration or by operation of law.

#### VIII

##### PARTITION NOT PERMITTED

The general common elements shall remain undivided and shall be owned in common by all of the owners of the units and no owner may bring any action for partition or division of the general common elements.

## IX

## INSEPARABILITY

No portion of a condominium unit may be separated from any other portion thereof during the period of condominium ownership prescribed herein, and each unit and the undivided interest in the common elements appurtenant to such unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete condominium unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a condominium unit or any portion thereof shall be construed to be a gift, devise, bequest, transfer, encumbrance, or conveyance of the entire condominium unit, together with all appurtenant rights created by law or by this Declaration.

## X

## USE OF COMMON ELEMENTS

Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general and limited common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners. No additions or alterations may be made to the common elements without first obtaining the written approval of the Association.

## XI

## USE AND OCCUPANCY

The units in the project shall be used and occupied solely for residential purposes by the owner, his family, guests, invitees and tenants, subject to the provisions contained herein.

## XII

## EASEMENTS FOR ENCROACHMENTS

If any portion of the common elements encroaches or hereafter encroaches upon a unit or units, a valid easement for the encroachment and the maintenance of the same, so long as it exists, shall and does exist. If any portion of a unit encroaches upon the common element, or upon an adjoining unit or units, a valid easement for the encroachment shall and does exist. Such encroachments shall not be considered or determined to be encroachments either on the common elements or the units.

## XIII

TERMINATION OF MECHANIC'S LIEN  
RIGHTS AND INDEMNIFICATION

13.1 Subsequent to the completion of the improvements described on the Condominium Map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit of another owner not expressly consenting to or requesting the same, or against the general common elements, except as to the undivided interest therein appurtenant to the unit of the owner for whom such labor shall have been performed and such materials shall have been furnished. The provisions herein contained are subject to the rights of the Association, as set forth herein.

13.2 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 the first owner's unit. At the written request of any owner, the Association shall enforce such indemnity by collecting from the owner of the unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment.

## XIV

SEPARATE ASSESSMENTS AND TAXATION -  
NOTICE TO ASSESSOR

14.1 Declarant shall give written notice to the Assessor of the County of Gunnison, Colorado, of the creation of condominium ownership of this project, as is provided by law so that each unit and the undivided interest in the common elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation.

14.2 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 general common elements shall be apportioned among the units in proportion to the fractional interest in the general common elements appurtenant to such unit.

## XV

## ADMINISTRATION AND MANAGEMENT

15.1 The administration and management of this project shall be governed by the Jason Condominiums Homeowners Association Agreement, herein referred to as the "Association."

15.2 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.

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

15.4 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.

## XVI

OWNERS' MAINTENANCE RESPONSIBILITY  
OF UNIT

16.1 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, sanitary and attractive condition.

16.2 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.

16.3 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.

16.4 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.

16.5 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 utility.

## XVII

RESERVATION FOR ACCESS -  
MAINTENANCE, REPAIR AND EMERGENCIES

17.1 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 such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit.

17.2 Damage to the interior or any part of a unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the common elements or as a result of any emergency repair within another unit at the instance of the Association, or of other owners, shall be an expense of all of the owners; provided, however, that if such damage is the result of the negligence of the owner of the unit, then such owner shall be responsible for all such damages. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

## XVIII

COMPLIANCE WITH PROVISIONS OF DECLARATION,  
HOMEOWNERS ASSOCIATION AGREEMENT

Each owner shall comply strictly with the provisions of this Declaration, the Jason Condominiums Homeowners Association Agreement and the decisions and resolutions of the Association adopted pursuant thereto and 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 and for damages or injunctive relief or both, by the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

## XIX

## REVOCATION OR AMENDMENT OF DECLARATION

This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements, and all of the holders of any recorded first mortgage covering or affecting any or all units, unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded in Gunnison County, Colorado; provided, however, that the percentage of the undivided interest in the general common elements appurtenant to each unit, as expressed in this Declaration, shall have permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded in Gunnison County, Colorado.

## XX

## ASSESSMENTS FOR COMMON EXPENSES

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.

## XXI

## APPORTIONMENT OF ASSESSMENTS

The assessments and expenses pertaining to the common elements and to the project as a whole shall be apportioned equally among all owners, except for hazard insurance premiums. Assessments for hazard insurance premiums shall be based upon that proportion of the total premium that the insurance carried on a condominium unit bears to the total coverage. The limited common elements shall be maintained as general common elements and the owners having exclusive use thereof shall not be subject to any separate charge or assessment therefor.

## AMOUNT OF ASSESSMENTS

22.1 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 and sewer charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Jason Condominiums Homeowners Association Agreement, 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.

22.2 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.

## XXIII

## TIME OF PAYMENT OF ASSESSMENTS

23.1 The assessments of the Association shall be computed and determined on a fiscal year basis.

23.2 Assessments shall be payable monthly in advance on or before the tenth day of each month by the owners of the condominium units.

23.3 The Association shall give written notice to the owners of the condominium units of the annual assessment and shall further prepare and deliver to each owner itemized monthly statements as to the monthly assessment.

23.4 The Association may provide that any assessment shall bear interest at a rate to be determined by the Association if not paid on the due date thereof.

23.5 Any holder of a first mortgage who obtains title to any condominium unit pursuant to the remedies provided for in the mortgage will not be liable for such unit's unpaid assessments which have accrued prior to the acquisition of title by the holder of said first mortgage.

## XXIV

## INSURANCE

24.1 The Association shall obtain and at all times maintain and keep in full force and effect insurance of the type and kind provided for herein and including such other insurance coverage for risks of a similar or dissimilar nature as are or shall hereafter become customary coverage with respect to a condominium project. Such insurance shall include:

- A. Insurance on the project in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which an owner of a similar building in the vicinity of the project would, in the exercise of prudent judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Association, such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above

requirements by the purchase of coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

- B. Broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. 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.
- C. Insurance against such other risks, of a similar or dissimilar nature, as the Association shall deem appropriate with respect to the project including any personal property of the Association located thereon.

24.2 The insurance shall be written by insurance companies duly authorized and licensed to do business in the State of Colorado. Such companies shall have a current rating of Best's A+ or better for management and a Best's AAAAA financial rating, or an equivalent rating.

24.3 The insurance shall be issued and carried in a policy naming the Association as the named insured as attorney-in-fact for the owners of the condominium units. All insurance policies shall identify the interest of each owner of a condominium unit and shall provide a standard non-contributory mortgagee clause in favor of each first mortgage holder.

24.4 All policies of insurance shall provide that the same cannot be cancelled by either the insured or the insurance company until after ten days prior written notice is first given to each owner and each first mortgage holder.

24.5 The Association shall furnish to each owner a true copy of such policies, together with a certificate identifying the interest of the owner and the first mortgage holder, if any.

24.6 All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy as to the interests of all other insured owners not guilty of such act or omission shall be in full force and effect.

24.7 Insurance coverage on the furnishings of other items of personal property belonging to the owner and casualty and public liability insurance within each individual unit shall be the responsibility of the owner thereof.

24.8 The Association may purchase policies of insurance which provide for continual updating and increase in coverage so as to keep pace with inflation or other factors for the protection of the owners. In addition the Association may make a determination of the maximum replacement value for all condominium units for insurance purposes as often as may be deemed necessary.

#### XXV

#### LIEN FOR NON-PAYMENT OF COMMON EXPENSES

25.1 All sums assessed to any condominium unit and not paid within thirty days from the date of assessment, together with interest 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 only:

- A. Tax and assessment liens on the condominium unit by any governmental authority.
- B. All sums unpaid on a first mortgage of record, including all unpaid obligatory advances made pursuant to such mortgage.

25.2 To evidence such lien, the Association or manager 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 liens shall attach from the date of the failure of payment of the assessment. 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 of filing the notice of claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association the monthly 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.

25.3 Any encumbrancer 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 encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of its encumbrance.

25.4 The Association shall report to any encumbrancer of a condominium unit any unpaid assessments remaining unpaid for more than thirty days after the date of assessment, provided that such encumbrancer shall have made written request therefor.

#### XXVI

##### 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 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 of his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

#### XXVII

##### STATEMENT OF ACCOUNT

27.1 Upon payment of a reasonable fee, not to exceed fifteen dollars, and upon the written request of any owner, prospective owner, holder of a mortgage or prospective 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 monthly 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 of indebtedness shall be complied with within twenty days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

27.2 The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee, not to exceed fifteen dollars, and upon written request from any such prospective grantee, he shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, if any, with

respect to the subject unit, the amount of the current monthly assessments, the date that such assessments become due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. Unless such request for a statement shall be complied with within twenty days of such request, then such requesting grantee shall not be liable for, nor shall the unit be conveyed subject to a lien for any unpaid assessments against the subject unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the units by the Declarant.

## XXVIII

## 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 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 and the Jason Condominium Homeowners Association Agreement.
- 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.

## XXIX

## ASSOCIATION AS ATTORNEY-IN-FACT - AUTHORITY

29.1 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, obsolescence or eminent domain.

29.2 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.

29.3 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 which may be necessary and appropriate to exercise the powers herein granted.

29.4 Repair and reconstruction if the improvements as used in the succeeding paragraphs means restoring the improvements to substantially the same condition in which the same existed prior to the damage, with each unit and common elements having substantially the same vertical and horizontal boundaries as before.

29.5 The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless the owners and the holders of all first mortgages agree not to rebuild in accordance with the provisions hereafter set forth.

## XXX

## REPAIR AND RESTORATION

In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction and the

improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and restoration of the improvements.

## XXXI

## INSURANCE PROCEEDS INSUFFICIENT

31.1 If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than fifty percent (50%) of all of the units, not including real property, 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 an assessment to be made against all of the owners and their units.

31.2 Such deficiency assessment shall be a common expense and made prorata according to each owner's percentage interest in the general common elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment.

31.3 The assessment provided for herein shall be a debt to each owner and a lien on his unit and may be enforced and collected as is provided in paragraphs 25 and 26.

31.4 In addition thereto, the Association as attorney-in-fact shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

- A. For payment of the balance of the lien of any first mortgage;
- B. For payment of taxes and special assessment liens in favor of any governmental authority;
- C. For payment of unpaid common expenses and assessments of the Association;
- D. For payment of junior liens and encumbrances in the order of and to the extent of their priority;
- E. The balance remaining, if any, shall be paid to the owner.

## XXXII

## DECISION NOT TO RE-BUILD

32.1 If more than fifty percent (50%) of all of the condominium units, not including real property, are destroyed or damaged, and if the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements do not voluntarily, within one hundred days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every holder of a first mortgage, the Association shall forthwith record a notice setting forth the fact or facts, and upon the recording of such notice by the Association, the remaining 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 and the Jason Condominiums Homeowners Association Agreement.

32.2 The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account

representing one of the condominium units. Each account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the owner. From each separate account the Association as attorney-in-fact shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the unit represented by such separate account.

32.3 Thereafter, each such account shall be supplemented by the appropriate amount of the proceeds derived from the sale of the project. Such apportionment shall be based upon each unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, by the Association as attorney-in-fact, for the same purposes and in the same order as is provided in paragraph 31.4, A through E.

### XXXIII

#### PLAN OF RECONSTRUCTION

33.1 If the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of the holders of all first mortgages, then all the owners shall be bound by the terms and other provisions of such plan.

33.2 Assessments made in connection with such plan shall be a common expense and made prorata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment.

33.3 The assessment provided for herein shall be a debt of each owner and a lien on his unit and may be enforced and collected as is provided in paragraphs 25 and 26.

33.4 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 the sale of such unit shall be used and disbursed by the Association as attorney-in-fact, for the same purposes and in the same order as is provided in paragraph 31.4, A through E.

### XXXIV

#### ADOPTION OF OBSOLESCENCE PLAN

34.1 The owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements may agree that the condominium units are obsolete and adopt a plan for its renewal and reconstruction, which plan shall have the unanimous approval of all holders of first mortgages.

34.2 If a plan for the renewal or reconstruction is adopted, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such a plan for renewal or reconstruction may give written notice to the Association that such condominium unit shall be purchased by the Association for the fair and reasonable market value thereof. The Association shall then have fifteen days within which to cancel such plan. If such plan is not cancelled, then the unit shall be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within sixty days thereafter.

34.3 If the owner and the Association are unable to agree as to the determination of the fair and reasonable market value of the condominium unit,

the same shall be submitted to arbitration in accordance with Rule 109 of the Colorado Rules of Civil Procedure as now in effect or as may hereafter be amended.

34.4 The Board of Arbitration shall be appointed in the following manner:

- A. Within ten days after the failure to agree on the fair and reasonable value, the owner shall nominate and appoint in writing, with written notice to the Association, his arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.
- B. Within ten days after the failure to agree on the fair and reasonable value, the Association shall nominate and appoint in writing, with notice to the owner, their arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.
- C. Within ten days after the appointment, the arbitrator for the owner and the arbitrator for the Association shall jointly nominate and appoint a third arbitrator within the time herein provided, or if the arbitrators appointed fail to nominate and appoint a third arbitrator then and in that event the arbitrator or arbitrators not so nominated and appointed shall be nominated and appointed by a judge of the District Court of Gunnison County, Colorado, upon the application of the party or parties that have properly nominated and appointed their arbitrator.

34.5 The decision of a majority of the Board of Arbitrators shall be the decision of the Board of Arbitrators as to the fair and reasonable market value of the condominium unit.

34.6 The Board of Arbitrators shall render its decision in writing within thirty days from the date the Board of Arbitrators is constituted.

34.7 The owner and the Association agree that they shall be bound and will abide by said decision and that said decision and award may be filed with the Clerk of the District Court of Gunnison County, Colorado, as the basis of a judgment.

34.8 In the event that there are not sufficient licensed real estate brokers in Gunnison County, Colorado to provide the necessary arbitrators, then licensed real estate salesmen of the State of Colorado residing in Gunnison County, Colorado may be used.

34.9 The sale shall be consummated within fifteen days thereafter, and the Association as attorney-in-fact shall disburse such proceeds as provided in paragraph 31.4, A through E.

#### XXXV

#### SALE UPON OBSOLESCENCE

35.1 The owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements may agree that the units are obsolete and that the same should be sold. Such plan must have the unanimous approval of every holder of a first mortgage.

35.2 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 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 and the Jason Condominiums Homeowners Association Agreement.

35.3 The sale proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one unit. Each such account shall be in the name of the Association and shall be further identified by the condominium unit designation and the name of the owner. From each separate account, the Association as attorney-in-fact shall use and disburse the total of such accounts, without contribution from one account to the other, for the same purposes and in the same order as provided in paragraph 31.4, A through E.

## XXXVI

## PROPERTY FOR COMMON USE

36.1 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.

36.2 A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed condominium unit.

## XXXVII

## RULES AND REGULATIONS

The Association may make reasonable rules and regulations governing the use or 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 for non-compliance to the extent permitted by law.

## XXXVIII

## CONTROLLING DOCUMENTS

In case of conflict between the Declaration and the Jason Condominiums Homeowners Association Agreement, the Declaration shall control.

## XXXIX

## MANAGEMENT CONTRACT

Each and every management contract made between the homeowner's association and the manager or managing agent during the period when the Declarant or other developer control the homeowner's association shall terminate absolutely, and in any event no later than thirty days after the termination of control by the Declarant or other developer of the homeowner's association.

## XL

## ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the figure, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the board of directors of the Association, or by an architectural committee composed of three or more representatives appointed by the board. In the event said board, or its designated committee, fails to approve or disapprove such design and

location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with.

XLI

ENFORCEMENT

The Association or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

XLI

GENERAL

42.1 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.

42.2 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.

42.3 Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 31<sup>st</sup> day of October, 1979.

EAST RIVER DEVELOPMENT, INC.

*John W. Staples*  
John W. Staples  
President



*Jacquelyn B. Staples*  
Jacquelyn B. Staples  
Secretary

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF GUNNISON )

The above and foregoing Condominium Declaration was acknowledged before me this 31<sup>st</sup> day of October, 1979, by John W. Staples as president and Jacquelyn B. Staples as secretary of East River Development, Inc.

WITNESS my hand and official seal.

My Commission expires: 1-8-83



*Jeanne Michelle Hanson*  
Jeanne Michelle Hanson  
Notary Public

EXHIBIT A to Condominium Declaration  
for Jason Condominiums

Lot 11, Block 5, CRESTED BUTTE SOUTH, SECOND  
FILING, County of Gunnison, State of Colorado

EXHIBIT B to Condominium Declaration  
for Jason Condominiums

<u>Unit No.</u>	<u>Percentage of Ownership</u>
1	25
2	25
3	25
4	25