

CONDOMINIUM DECLARATION

FOR

BUCK CREEK PLAZA CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

19-8-61
E.P.C.-8-61

THAT WHEREAS, the undersigned, hereinafter called "Declarant", is the owner of the real property described on the attached Exhibit "A", which by this reference is made a part hereof; and

WHEREAS, Declarant desires to establish a condominium project under the Condominium Ownership Act of the State of Colorado, as amended; and

WHEREAS, Declarant does hereby establish a plan for the ownership of the condominium real property estates, hereinafter described, subject to easements, restrictions, reservations, conditions, taxes and assessments, if any, on the real property described in the attached Exhibit "A"; consisting of the area or space contained in each of the air space units located within the improvements and the co-ownership by the individual and separate owners thereof of an undivided interest in all of the remaining property, which property is hereinafter defined and referred to as general common elements; and

WHEREAS, a Condominium Map will be filed showing the location of the multi-story building on the real property described in Exhibit "A";

NOW THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, his heirs, executors, administrators, personal representatives, devisees, successors and/or assigns, and any person or entity acquiring or owning an interest in the real property and improvements, his grantees and their heirs, executors, administrators, personal representatives, devisees, successors and/or assigns.

1. Definitions. The following definitions apply under the provisions of this declaration.

(a) Apartment or office or store or apartment unit, office unit or store unit means one individual air space unit which is contained within the perimeter walls, floor and ceilings of such apartment, office or store in the building as shown and identified on the Map.

(b) Condominium unit or unit means one individual air space unit together with the interest in the general and limited common elements appurtenant to such unit.

(c) Residential condominium unit means and includes an apartment unit.

(d) Commercial condominium unit means and includes an office unit or a store unit.

(e) Building means the building improvement comprising a part of the property.

(f) Entire premises or property means and includes the land, the building, all improvements thereon, and all rights, easements and appurtenances belonging thereto.

(g) Owner means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more condominium units.

(h) General common elements means and includes:

(1) The land on which the building is located as shown and described on the Map.

(2) The foundations, columns, girders, beams, supports, main walls, roofs, basement, halls, lobbies, corridors, stairs, stairways, yard and crawl spaces.

(3) The mechanical installations of the building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, and heating which exist for common use.

(4) Any tanks, pumps, motors, fans, compressors, ducts and in general, the apparatus and installations of the building existing for common use.

(5) Such enclosed air spaces in the building as are provided for community or common use.

(6) All other parts of the building and of the entire premises necessary or convenient to its existence, maintenance and safety, or normally in common use.

(i) Limited common elements means those parts of the general common elements reserved for use by fewer than all of the owners of condominium units.

(j) Common residential elements means those parts of the general common elements reserved for use by the owners of residential condominium units.

(k) Common commercial elements means those parts of the general common elements reserved for use by owners of commercial condominium units.

(l) General common expenses means and includes:

(1) All sums lawfully assessed against the general common elements by the managing agent or Board of Directors.

(2) Expenses of administration and management, maintenance, repair or replacement of the general common elements.

(3) Expenses declared common expenses by provisions of this Declaration and the By-Laws.

(4) Expenses agreed upon as common expenses by the unit owners.

(m) Common residence expenses means and includes:

(1) All sums lawfully assessed against and limited to the common residential elements by the managing agent or Board of Directors.

(2) Expenses of administration and management, maintenance, repair or replacement of the common residential elements.

(3) Expenses declared common residence expenses by provisions of this Declaration and the By-Laws.

(4) Expenses agreed upon as common residence expenses by the owners of residential condominium units.

(n) Common commercial expenses means and includes:

(1) All sums lawfully assessed against and limited to the commercial common elements by the managing agent or Board of Directors.

(2) Expenses of administration and management, maintenance, repair or replacement of the commercial common elements.

(3) Expenses declared commercial common expenses by provisions of this Declaration and the By-Laws.

(4) Expenses agreed upon as commercial expenses by the owners of commercial condominium units.

(o) Association of unit owners or Association means a Colorado non-profit corporation, its successors and assigns, the By-Laws of which shall govern the administration of this condominium project, the members of which shall be all of the owners of the condominium units.

(p) Map or plans means and includes the engineering survey of the real property described on the attached Exhibit "A" showing the location thereon of the building.

2. The Map shall be filed for record prior to the first conveyance of a condominium unit. The Map shall depict and show at least the following:

(a) The legal description of the surface of the real property.

(b) The linear measurements and location, with reference to the exterior boundaries of the real property, of the building and all other improvements built on the real property.

(c) The building name or designation.

(d) The floor plan.

(e) The number or designation of each apartment office and store unit.

(f) The linear dimensions of each apartment, room, office and store unit.

(g) The elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane, and the linear measurements showing the thickness of the perimeter walls of the building.

In interpreting the Map, the existing physical boundaries of each unit as constructed shall be conclusively presumed to be its boundaries.

Declarant reserves the right to amend the Map, from time to time, to conform same to the actual physical location of the constructed improvements and to any changes, modifications or alterations.

Prior to the first conveyance of a condominium unit, there shall be filed for record as a part of the Map a

certificate of a registered architect or licensed professional engineer certifying that the improvements as constructed conform substantially to the Map; that the Map fully and accurately depicts the layout, measurements and location of all the improvements on the land; the building name or designation; the apartment, room, office and store unit designation, the dimensions of such units and the elevations of the unfinished floors and ceilings.

3. The property is hereby divided into the fee simple estates as set forth in the attached Exhibit "B" which is by this reference made a part thereof. Declarant reserves the right to combine or divide the spaces set forth in Exhibit "B", and by so combining or dividing said spaces, to create spaces either of a larger or of a smaller size than the spaces set forth in Exhibit "B" for the purposes either of conveying or of leasing. Declarant covenants that if alterations in unit space are made for the purpose of conveyancing, as herein provided, Declarant will record said alterations in a supplement or supplements to the Map describing the spaces created in the same detail and with the same particularity required in the case of units which are depicted in the original Map.

4. A portion of the general common elements is set aside and reserved for the use of the owners of the respective condominium units, and such areas shall be known and referred to as the limited common elements. The limited common elements so allocated and reserved are described, located or shown on the floor plans of the Map and by legend symbol or words.

5. Every contract for the sale of a condominium unit written prior to the filing for record of the Map may legally describe a condominium unit by its identifying unit number and building symbol followed by the words BUCK CREEK PLAZA CONDOMINIUMS with further reference to the Map thereof to be filed for record and the Declaration to be recorded. Prior to the filing of the Map, reference in any contract for the purchase of a condominium unit shall be to the floor plan of said unit together with an identifying number and to architect. all renderings if available, or to both, which plans or renderings shall be determinative as fixing the obligations of the parties under the contract only insofar as they locate the subject unit in the building and establish its dimensions, floor plan and chief architectural features.

6. Every deed, lease, mortgage, trust deed or other instrument may legally describe a condominium unit by its identifying apartment, room, office or store unit number followed by the words BUCK CREEK PLAZA CONDOMINIUMS with further reference to the Map filed for record and the recorded Declaration. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect not only the apartment, office or store unit, but also the general common elements and the limited common elements appurtenant thereto. Each such description shall be construed to include a nonexclusive easement for ingress and egress and for use of the general common elements together with the right to use of the limited common elements.

7. Each apartment, office and store and the undivided interest in the general and/or limited common elements, appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit.

8. Declarant shall give written notice to the assessor of Eagle County, Colorado, of the creation of such condominium ownership of property, as is provided by law, so that each apartment office and store unit and the undivided interest in

members shall be entitled to vote in Association elections on residential issues, and in such elections, any residential member shall be entitled to vote the percentage of the total residential vote equal to such member's percentage interest in the residential common elements. Only commercial members shall be entitled to vote in association elections on commercial issues, and, in such elections, any commercial member shall be entitled to vote the percentage of the total commercial vote equal to such member's percentage interest in the commercial common elements.

16. Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth herein or reserved hereby may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any obligation it may owe to any owner or other person under the terms of this Declaration.

17. The Association shall be responsible for the exclusive management and control of the general common elements and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of exterior surfaces of buildings and improvements located on the property, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, the maintenance and repair of utility lines, air conditioning equipment, and all other improvements or materials located within or used in connection with the general common elements. The cost of such management, operation, maintenance and repair shall be borne as hereinafter provided. The Association shall have the right, and it shall be the Association's obligation, to secure to the use of unit owners, by lease or otherwise, an automobile parking area of the capacity and in accordance with the design specifications, required by ordinances of the Town of Avon and the County of Eagle, so long as such ordinances shall remain in effect, and to allocate the use of such parking area to unit owners on an equitable basis. Parking area owned or leased by the Association in excess of the area required by unit owners may be leased or let by the Association to members of the general public, and the revenue derived from such leasing or letting shall be applied in the manner hereafter provided in Paragraph 31.

The Association shall have the right to grant easements for utility purposes over, upon, under or through any portion of the common elements, and is hereby irrevocably appointed as attorney-in-fact for each owner for such purpose.

18. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the property or the enforcement of this Declaration. The Association may arrange with the others to furnish lighting, heating, water, trash collection, sewer service and other common services to each unit. The cost of such services shall be borne as hereinafter provided.

19. The Association may acquire and hold for the use and benefit of all of the owners tangible and intangible

the general and/or limited common elements appurtenant thereto shall be deemed a separate parcel and subject to separate assessment and taxation.

9. 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.

10. The general common elements shall be owned in common by all of the owners of the apartment, office and store units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Condominium units shall not be partitioned by the owners thereof. The right of partition in respect to such units is hereby denied.

11. Each owner shall be entitled to exclusive ownership and possession of his apartment, office or store. Each owner may use the general common elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

12. Use of the condominium units shall be restricted as follows in accordance with rules and regulations to be made, or under By-Laws to be adopted, by the Board of Directors:

(a) Residential units shall be used and occupied solely for the purpose of lodging or as a dwelling by the owner or by the owner's family, guests, employees, invitees, licensees or tenants. No residential unit shall be used for any commercial purpose except as lodging on a rental basis.

(b) Commercial units shall be used and occupied only for commercial activities which do not interfere with the residential use of residential units. Excluded from commercial units are any restaurant and night club operations, and any entertainment, whether live or recorded, which do not have the prior written approval of the Board of Directors, which approval shall not be unreasonably withheld. The Board of Directors shall not grant approval for any restaurant, night club, or entertainment without first having considered and approved proposed devices for ventilation, exhaust and fire protection, and without first having endorsed the proposed restaurant, night club or entertainment as compatible with the residential character of the building. Approval shall be denied in the case of any proposed restaurant, night club or entertainment which, in the opinion of the Board of Directors, would be a nuisance or an annoyance to the owners of condominium units. The Board of Directors may require, as a condition of its approval, that an owner undertaking conversion of his unit to a restaurant or night club make such structural changes as may reasonably be necessary to prevent emission from the premises of noise and odor, and may require that any such owner enter into an appropriate undertaking to guarantee his performance under any such requirement or requirements.

(c) The Board of Managers shall adopt By-Laws and shall make rules and regulations prohibiting the commission of nuisances by owners of condominium units, and providing for sanctions against violators.

13. If any portion of the general common elements encroaches upon an apartment, room, office or store 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 of an apartment, room, office or store unit or units, encroaches upon the general common elements or upon an adjoining apartment, room, office or store

unit or units, a valid easement for the encroachment and the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachment(s) and easement(s) shall not be considered or determined to be encumbrances either on the general common elements or the apartment units.

14. Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in an apartment, office or store unit with 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 apartment, office or store unit of any other owner not expressly consenting to or requesting same, or against the general 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, office or store unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's apartment, office or store unit at such owner's request.

15. The administration of the condominium property shall be governed by the By-Laws of BUCK CREEK PLAZA CONDOMINIUM OWNERS ASSOCIATION, a Colorado non-profit corporation, hereinafter referred to as the "Association".

An owner of a unit shall become a member of the Association upon conveyance to such owner of a unit, and shall remain a member for the period of his ownership. During the period of development of the building and conveyancing of units, and until every unit is sold or usefully occupied by a lessee or until September 1, 1981, whichever occurs sooner, the designation and election of the Board of Directors of the Association may be exercised by Declarant at Declarant's option.

If title to a condominium unit is held by more than one person, the membership shall be shared by such persons in the same proportion in which such persons share title to the condominium unit. No person other than an owner shall be a member of the Association, and membership in the Association shall not be transferred unless such transfer is incidental to the transfer of ownership; provided, however, that rights of membership may be secured by a lien on a condominium unit.

Class
- General
- Residential
- Commercial

The Association shall have three classes of membership as follows: general, residential and commercial. Every owner of a condominium unit shall enjoy general membership. Residential memberships shall be limited to owners of residential units. Commercial memberships shall be limited to owners of commercial units. The vote of the general membership shall be required for determination of general issues affecting the entire premises, the building as a whole, the general common elements, the general common expenses, and every other issue not strictly limited in application to the residential units on the one hand, or the commercial units on the other hand. Issues limited in application to residential units shall be determined by the vote of the residential membership. Issues limited in application to the commercial units shall be determined by the vote of the commercial membership. A presumption shall exist in favor of generality of issues, and each issue shall be presumed a general issue unless determined to be a residential issue, or a commercial issue, by inference which is clear and unmistakable. Only members shall be entitled to vote in Association elections, and in any election on general issues, any member shall be entitled to vote the percentage of the total vote equal to such member's percentage interest in the general common elements. Only residential

personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the owners in the same proportion as their respective interests in the general common elements. Such interest shall not be transferable except with the transfer of a condominium unit. 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 other owners. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with foreclosed condominium unit.

20. The Association may make reasonable rules and regulations governing the use of the units and of the general common elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may suspend any owner's voting rights in the Association during any period or periods during which such owner fails to comply with such rules and regulations, or with any other obligations of such owner under this Declaration. The Association may also take judicial action against any owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

21. The Association may exercise any other right or privilege given to it expressly by this Declaration or By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

22. The owners shall have the irrevocable right, to be exercised by the managing agent or the Board of Directors of the Association, to have access to each apartment, office or store 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 general or limited common elements or to another apartment, office or store unit or units.

Damage to the interior or any part of an apartment, office or store unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of emergency repairs within another apartment, office or store unit at the instance of the Association shall be a common expense of all of the owners; provided, however, that if such damage is the result of the negligence of an apartment, office or store unit owner, then such unit owner shall be reasonable for all of such damage. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage.

23. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the interior non-supporting walls, the materials (such as but not limited to plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the unit and the unit doors and windows. The owner shall not be deemed to own the utilities running through his unit which are utilized for or serve one or more other units except as a tenant in common with the other owners. Such right to maintain, repair, alter and remodel shall carry the obligation to replace any finishing materials removed with similar or other types or kinds of finishing materials.

24. An owner shall maintain and keep in repair the interior of his own unit, including the fixtures thereof. 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 hereafter referred to as "utilities") enter the unit shall be maintained and kept in repair by the owner thereof.

25. Each owner shall have the right to ingress and egress over, upon and across the general common elements necessary for access to his unit and shall have the right to horizontal and lateral support of his unit, and such rights shall be appurtenant to and pass with the title to each condominium unit.

26. The Association shall have a nonexclusive easement to make such use of the general common elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

27. 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.

28. Each owner shall comply strictly with the provisions of this Declaration, the By-Laws and the decisions and resolutions 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 and for damages or injunctive relief or both, maintainable by the managing agent or Board of Directors, in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

*to amend
Deeds*

29. Except as is otherwise provided in this Declaration, this Declaration shall not be revoked nor shall any of the provisions herein be amended unless seventy per cent (70%) or more of the owners representing an aggregate ownership interest in the general common elements and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all condominium units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded; provided, however, that the percentage of the undivided interest in the general common elements appurtenant to each apartment, office and store unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the condominium unit owners as expressed in a duly recorded amendment to this Declaration.

30. All owners shall be obligated to pay the estimated assessments imposed by the Board of Directors or managing agent of the Association to meet the common expenses. Assessments for general common expenses, except for insurance premiums and certain utilities, shall be made pro rata according to each owner's percentage interest in and to the general common elements. Assessments for insurance premiums shall be based upon that proportion of the total premium(s) that the insurance carried on a condominium unit bears to total coverage. Assessments for utilities shall be based upon metered use in the case of units for which meter readings are available. In the case of units for which meter readings are not available, assessments for utilities shall be based upon a fair apportionment of all unmetered consumption in the building, said apportionment to be made in respect to each such unit enjoying unmetered consumption, and to be based upon such unit's percentage interest in the general common elements, and proportional thereto, in the case of every such unit, unless such proportional determination results in an inequity in the case of a particular unit, in which event the Board of Directors upon an affirmative showing of inequity by the owner of such unit, or by another owner or

other owners of a unit or units, or upon its own initiative, shall set aside such proportional determination, and substitute therefor a determination based upon an accurate estimate of actual consumption.

Assessments for residential common expenses shall be made pro rata according to each residential unit owner's interest in and to the common residential elements.

Assessment for commercial common expenses shall be made pro rata according to each commercial unit owner's interest in and to the common commercial elements.

The limited common elements shall be maintained as general common elements, and owners having exclusive use thereof shall not be subject to any special charges or assessments. Assessments for the estimated common expenses, including insurance, shall be due monthly in advance on the first day of each month. The managing agent or Board of Directors shall prepare and deliver or mail to each owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments are made. The Association may require owners to deposit advance assessment payments in a sum equal to four months' estimated assessment obligation, and to maintain such advance throughout such owners' respective periods of ownership.

Contribution for monthly assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of a month.

31. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the managing agent or Board of Directors of the Association shall from time to time determine is to be paid by all of the owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with maintenance and operation of the general common elements, which sum may include, among other things: expenses of management, taxes and special assessments until separately assessed, fire insurance with extended coverage and vandalism and malicious mischief with endorsements attached issued in the amount of the maximum replacement value of all of the condominium units (including all fixtures, interior walls and partitions, decorated and finished surfaces of perimeter walls, floors and ceilings, doors, windows and other elements or materials comprising a part of the apartment units), casualty and public liability and other insurance premiums including coverage insuring against damage as the result of water flowing from the exterior to the interior of the building, or from any portion of the interior to any other portion of the interior, landscaping and care of grounds, common lighting and heating, repairs and renovations, trash and garbage collections, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the managing agent or Board of Directors under or by reason of this Declaration, the payment of any deficit remaining from a previous period, the creation of a capital improvement fund, the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the general common elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the owner from their obligation to pay.

Assessment may also be made based upon the cash required to acquire or lease, and to maintain an automobile parking area, as hereinabove provided. Such assessments, however, shall be administered separately from the common assessments aforementioned and shall represent unit owners' pro rata share of the cost of acquiring or leasing, and maintaining such parking area, reduced by the income derived from leasing or letting to members of the general public.

The managing agent or Board of Directors shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Association the insured, which policy or policies shall identify the interests of each condominium unit owner and which shall provide for a standard, noncontributory mortgagee clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice to each owner and each first mortgagee. The managing agent or Board of Directors shall, upon the request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor. 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 any such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Determination of maximum replacement value of all condominium units (for insurance purposes) shall be made every two years by one or more written appraisals, copies of which shall be furnished forthwith to each mortgagee of a condominium unit. In addition, each owner shall be notified of such appraisal(s). The first such appraisal shall be made during the month of November, 1980.

32. No owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the general or common elements, or abandonment of his apartment, office or store.

33. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit, plus interest thereon at eighteen per cent (18%) per annum, shall constitute a lien on such unit superior (prior) to all other liens and encumbrances except only for:

(a) Tax and special assessments liens in favor of any assessing unit; and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such a lien.

To evidence such lien the Board of Directors or managing agent may, but shall not be required to, prepare a written notice setting the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the condominium unit. Such notice shall be signed by one of the Board of Directors or by the managing agent and may be recorded in the office of the Clerk and Recorder of Eagle County, Colorado. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's

*Due Bee
18%
interest*

condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure the owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses and attorney's fees for filing the notice or claim of lien and all reasonable attorney's fees in connection with such foreclosure. Additionally, the owner shall also be required to pay any costs or expenses, including reasonable attorney's fees, incurred by the Association in connection with the collection of assessments due the Association by the owner, whether or not foreclosure is actually commenced. The owner shall also be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the common expenses assessed against each condominium unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same. Should the Association incur any expenses in collecting the debt of the owner for assessments, including reasonable attorney's fees, whether suit is actually commenced or not, said expenses shall constitute an additional debt of the owner and shall specifically be allowed by the Court in any judgment entered against the owner.

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

14. Upon payment of a reasonable fee not to exceed \$50.00 and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium unit, the Association, by its managing agent or if there is no managing agent, then by its Board of Directors, 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 such assessment becomes due, credit for advanced payments or prepaid items, 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 ten 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.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses 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 \$50.00, and upon written request any such prospective grantee shall be entitled to a statement from the managing agent or if there is no managing agent, then by its Board of Directors, setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall

not be liable for, nor shall the condominium unit conveyed be subject to lien for any unpaid assessments against the unit.

35. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create junior mortgages of the following conditions:

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

(b) That the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association.

36. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

Title to any 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 BUCK CREEK PLAZA CONDOMINIUM OWNERS ASSOCIATION, a Colorado non-profit corporation, their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its damage, destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of 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 mean restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each apartment unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) Except as is provided in Subparagraph (c) of this Paragraph, in the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s).

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than 33-1/3% of all of the condominium units, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 33. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (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 and to the extent of their priority.
- (5) The balance remaining, if any, shall be paid to the condominium unit owner.

(c) If more than 33-1/3% of all of the condominium units, not including land, are destroyed or damaged, and if the owners representing an aggregate ownership interest of 51%, or more, of the general common elements do not voluntarily within thirty days thereafter make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining premises shall be sold by the Association, as attorney-in-fact, for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each condominium 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 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 forthwith use and disburse the total amount (of each) of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the condominium unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in Subparagraph (b)(1) through (5) of this Paragraph.

If the owners representing an aggregate ownership interest of 51%, or more, of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice hereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 33. 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 provided time, 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 Subparagraphs (b) (1) through (5) of this Paragraph.

(d) The owners representing an aggregate ownership interest of 85%, or more, of the general common elements may agree that the condominium units are obsolete and adopt a plan for the renewal and reconstruction, provided such plan has the unanimous approval of all first mortgagees. If a plan for the renewal or reconstruction is adopted, then the expense thereof shall be payable by all of the owners as a common expense; provided, however, that an owner not a party to such plan for renewal or reconstruction may make to the Association a written offer of sale of such owner's unit for the fair market value thereof. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nominations to the other party) a qualified appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another qualified appraiser to be umpire

between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two qualified appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within 10 days of the failure of the two appraisers to agree, which, in any event, shall not be later than 20 days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, any such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owner. The sale shall be consummated within 15 days thereafter, and the Association shall disburse such proceeds as is provided in Subparagraph (b) (1) through (5) of this Paragraph.

(e) The owners representing an aggregate ownership interest of 85%, or more, of the general common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan (agreement) must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact, for all of the owners, free and clear of the provisions contained in this Declaration, the Map and By-Laws. 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 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 accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Subparagraphs (b) (1) through (5) of this Paragraph.

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

38. Each owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, until such address is changed by a notice of address change duly recorded.

39. 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.

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

41. 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 has duly executed this Declaration this 28th day of August, 1980.

CJB COMPANY, a Colorado general partnership

BY Benchmark at Beaver Creek, a general partner
by Benchmark-Avon Properties, a partnership
and sole general partner of Benchmark at
Beaver Creek.

by [Signature]
A. J. Wells, a managing partner

BY The Cuny-Jordan Partnership, a general
partner

by [Signature]
Richard J. Cuny, a partner

by [Signature]
Ludwig F. Jordan, a partner

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)



Subscribed and sworn to before me this 28th day of August, 1980
by A. J. Wells, a managing partner of Benchmark-Avon Properties,
sole general partner of Benchmark at Beaver Creek.

Witness my hand and official seal.
My commission expires: March 14, 1982.

[Signature]
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)



Subscribed and sworn to before me this 28th day of August, 1980
by Richard J. Cuny and Ludwig F. Jordan, general partners of the Cuny-
Jordan Partnership.

Witness my hand and official seal.
My commission expires: March 14, 1982.

[Signature]
Notary Public

EXHIBIT "A"
TO
CONDOMINIUM DECLARATION
FOR
BUCK CREEK PLAZA CONDOMINIUMS

The real property referred to in the foregoing Condominium Declaration is legally described as follows:

Lot 72, Block 2 as per the Official Plat - Town of Avon, Eagle County, Colorado and Final Subdivision Plat - Amendment Number 4, Benchmark at Beaver Creek, Eagle County, Colorado, recorded on September 5, 1978, in Book 274 at Page 701.