

DECLARATION - VIKING CONDOMINIUMS

THIS DECLARATION - VIKING CONDOMINIUMS is made and declared this 10<sup>th</sup> day of November, 1981, by JOHN M. PORTER, hereinafter referred to as the "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in Mesa County, Colorado, sometimes hereinafter referred to as the "Real Property," being more particularly described as follows:

Lots 15 and 16, in Block 6, of FAIRWAY PARK, and Beginning at the Northeast Corner of Lot 15 in said Block 6, thence East 100 feet, thence South 310 feet, thence West 100 feet to the Southeast Corner of Lot 16 in said Block 6, thence North 310 feet to the Point of Beginning.

WHEREAS, Declarant intends to provide for the condominium ownership of the Real Property under the Condominium Ownership Act of the State of Colorado and to define the character, duration, rights, obligations and limitations of condominium ownership of Viking Condominiums, and for such purpose executes this Declaration - Viking Condominiums, hereinafter referred to as the "Declaration;"

NOW, THEREFORE, Declarant hereby declares that the Real Property and all buildings and other improvements located thereon shall be held, conveyed, devised, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plan and scheme of condominium ownership hereinafter set forth, and are further declared to be for the benefit of the Real Property and improvements situate thereon in every part thereof and for the benefit of each Owner, and all provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens as to the Declarant and his assigns and to all persons hereafter acquiring or owning any interest in the Real Property or improvements thereon, however such interest may be obtained.

ARTICLE I. DEFINITIONS

1.1 Association. "Association" shall mean and refer to the 700 Golfmore Association, Inc., a non-profit corporation organized under the laws of the State of Colorado, and its successors and assigns.

1.2 Board. "Board" shall mean and refer to the Board of Managers of the Association.

1.3 Building. "Building" shall mean and refer to any building or similar structure, including all fixtures and improvements therein contained, situate on the Real Property.

1.4 Common Elements. "Common Elements" shall mean all of the Condominium Project except all Units, and includes, but is not limited to, all amenities (such as parking, recreation and service areas). Common Elements shall be divided into two categories, "General Common Elements" and "Limited Common Elements" having the definitions below:

1.4.1 "General Common Elements" means all Common Elements except all Limited Common Elements, and may be designated by abbreviation on the Condominium Map as "G.C.E.;"

1.4.2 "Limited Common Elements" means those Common Elements designated or reserved herein or on the Condominium Map for the exclusive use by fewer than all of the Owners of Units, and may be designated by abbreviation on the Condominium Map as "L.C.E.."

1.5 Condominium Map. "Condominium Map means a plat or survey, or any supplement or amendment thereto, of the Real Property, showing a survey and legal description thereof, the location of any Building with respect to the boundaries of the Real Property, together with diagrammatic floor plans of each Building, showing the boundaries of each Unit, together with Unit numbers identifying the Units, including horizontal and vertical locations and dimensions of each Building, together with such other information as may be included thereon in the discretion of the Declarant.

1.6 Condominium Unit. "Condominium Unit" means a Unit together with an appurtenant and undivided interest in the Common Elements in the percentage set forth on Exhibit "A," or any amendments to Exhibit "A."

1.7 Declaration. "Declaration" means this Declaration - Viking Condominiums, and any supplements or amendments thereto.

1.8 Declarant. "Declarant" shall mean John M. Porter.

1.9 Owner. "Owner" means any person or entity at any time owning a Condominium Unit; the term "Owner" shall exclude any Mortgagee, as hereinafter defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.10 Mortgage. "Mortgage" means any mortgage, deed of trust or other security instrument by which a Condominium Unit or any part thereof is encumbered. Unless specifically excepted by a Mortgage, all amenities (such as parking, recreation and service areas) are a part of the Condominium Project and shall be covered by the Mortgage to the same extent as the Common Elements.

1.11 Mortgagee. "Mortgagee" means any person or entity named as the mortgagee or beneficiary under any mortgage or deed of trust by which the interest of any Owner in a Condominium Unit is encumbered.

1.12 Project. "Project" and "Condominium Project" shall collectively mean the Real Property and the Building and other improvements located on the Real Property.

1.13 Real Property. "Real Property" means the tract of land described in the first recital hereof.

1.14 Unit. "Unit" means an individual air space unit, consisting of enclosed rooms in a Building and bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof as shown and numbered on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained. Notwithstanding such markings, the following are not part of the Unit:

Bearing walls, floors and roofs (except for the interior surface thereof, if a perimeter wall, floor or ceiling), foundations, shafts, central heating, air conditioning equipment, tanks, pumps and other services used by more than one Unit, pipes, vents, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means the points

at which such services are located when such windows or doors are closed; the physical perimeter windows and doors themselves being part of the Common Elements, as herein defined.

#### ARTICLE II. PREPARATION AND FILING OF THE CONDOMINIUM MAP.

2.1 The Condominium Map shall be prepared and filed for record in the real estate records of the County Clerk and Recorder of Mesa County, Colorado, contemporaneously with the recording of the Declaration. The Condominium Map shall reflect the true location of the Building, Units and Common Elements, as built.

#### ARTICLE III. NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP.

3.1 Estates of an Owner. The Project is hereby divided into 12 Condominium Units, each consisting of a separate fee simple interest in a Unit and an undivided percentage fee simple interest in the Common Elements, as is set forth in Exhibit "A," or any amendment to Exhibit "A." Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units.

3.2 Right to Combine Units. Declarant reserves the right and Owners, upon obtaining written permission of the Association, hereafter defined, are granted the right to combine physically the area or space of one Unit with the area or space of one or more adjoining Units. Such combination shall not affect the designation nor prevent separate ownership of such Units in the future. Any walls or other structural separation between combined Units, or any space which would be occupied by such structural separation but for the combination of Units shall remain Common Elements. Alterations to walls or other structural separations shall not alter the bearing capabilities of such structures and shall not adversely affect other Owners.

3.3 Limited Common Elements. That portion of the Common Elements designated on the Condominium Map as "Limited Common Elements" or "L.C.E." is hereby set aside and reserved for the exclusive use, occupancy, control, maintenance and repair of and by the Owner or Owners whose Unit or Units is or are designated on such Limited Common Elements on the Condominium Map; provided, however, that that portion of the Limited Common Elements designated as "Yard" or "Entry" including plantings contained therein, shall be maintained at the expense of all the Owners in the same fashion as a General Common Element notwithstanding the designation thereof as "Limited Common Element" or "L.C.E.". Further, Limited Common Element planting boxes, planting areas and planters not contained within an "Entry" shall be maintained by the Unit to which they are adjacent except those planting boxes adjacent to Condominium Units A, G and J shall be maintained the same as those planters within Entries.

3.4 Title. Title to a Condominium Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Colorado, including, but without limitation, joint tenancy or tenancy in common.

3.5 Inseparability. No part of a Unit or of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of condominium ownership prescribed herein, so that 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 Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire

Unit together with all appurtenant rights created by law or by this Declaration.

3.6 Partition not Permitted. The Common Elements shall be owned in common by all the Owners of Units, and no Owner may bring any action for partition thereof.

3.7 Owner's Rights and Easements to Common Elements. Subject to the limitations contained in this Declaration, each Owner shall have a non-exclusive right and easement of ingress and egress over, across and upon the Common Elements for the purpose of using and enjoying the same, getting to and from his Unit, parking area, and public ways for pedestrian and vehicular traffic, which right and easement shall be appurtenant to, and pass with the transfer of title to each Owner's Unit. The Owner's non-exclusive right to the use of any General Common Element recreational facilities owned, kept or maintained by the Association shall be subject to the following:

3.7.1 The covenants, conditions, restrictions, easements, reservations, rights of way and all other provisions contained in this Declaration or as set forth on the Condominium Map;

3.7.2 The right of the Association to suspend any and all rights of any Owner to the use of any of the Association's General Common Element recreational facilities for any period during which any Association assessment against such Owner or against such Owner's Condominium Unit remains unpaid and for any reasonable period assessed by the Association as a result of the Owner's infraction, or the infraction of any member of the Owner's family or by the Owner's guests or invitees, of any rule or regulation of the Association;

3.7.3 The right of the Association to limit the number of guests or invitees of each Owner which may use any recreational facilities maintained on the General Common Elements by the Association.

3.7.4 The right of the Association to adopt, from time to time, rules and regulations regarding the reasonable use of the Common Elements and the facilities located thereon as the Association may determine is necessary or prudent.

3.8 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, carpet, drape, wax, paper or otherwise finish or refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit, provided, any interior decoration such as window covering or drapes, which are visible from the exterior of the Unit shall be subject to approval by the Architectural Control Committee of the Association provided in Article X below.

3.9 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

3.10 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association, hereafter defined, as their agent, to have access to each Unit and to 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 or Units. The Association shall also have such right independent of any agency relationship. 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 emergency repairs within another Unit at the instance of the Association or of the Owners shall be an expense of all of the Owners if such repair was to a General Common Element. In the event, however, such repair was to a Limited Common Element, the Owners of Units having the exclusive use of such Limited Common Element shall bear the expense of such repairs excepting yards and entries designated as "L.C.E.," which shall be the expense of all Owners. In the event the damage is the result of the negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored to substantially the same condition as existed prior to damage. The amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article VIII.

3.11 Owner's Right to Ingress and Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Elements necessary for normal access to his Unit and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit.

3.12 Association's Right to Use of Common Elements. The Association shall have a non-exclusive easement to make such use of the 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.

3.13 Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by Declarant, or otherwise, shall be construed to grant and reserve such reciprocal easements as set forth in this Article, even though no specific reference to such easements or to this Article appear in such conveyance.

3.14 Ad Valorem Taxation. As soon as possible after the Condominium Map shall have been filed for record in Mesa County, Colorado, Declarant shall deliver a written notice to the Assessor of Mesa County, Colorado, as provided by law, setting forth the descriptions of the Condominium Units so that each Condominium Unit shall be assessed separately thereafter for all taxes, assessments, and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

3.15 Liens Prior to First Mortgage. All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Condominium Units and not to the Condominium Project as a whole.

ARTICLE IV. CONVEYANCE AND DESCRIPTION OF A CONDOMINIUM UNIT.

After the Condominium Map shall have been filed for record in Mesa County, Colorado, every contract for the sale of a Condominium Unit and every other instrument affecting title to a Condominium Unit may describe that Condominium Unit by the number shown on the Condominium Map with the appropriate reference to the Condominium Map and to this Declaration, as each shall appear on the records of the County Clerk and Recorder of Mesa County, Colorado, in the following fashion:

Condominium Unit \_\_\_\_\_ as shown on the Condominium Map for Viking Condominiums appearing in the records of the County Clerk and Recorder of Mesa County, Colorado, in Reception No. \_\_\_\_\_, and as defined and described in that Declaration - Viking Condominiums, appearing in such records at Book \_\_\_\_\_, and Page \_\_\_\_\_.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations on such ownership as described in this Declaration.

ARTICLE V. MECHANIC'S LIEN RIGHTS.

No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any rights to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the 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. 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 discharge of the lien. Such collection shall be made by a special assessment pursuant to Article VIII.

ARTICLE VI. THE ASSOCIATION

6.1 Membership. Every Owner shall be entitled and required to be a member of the Association, a non-profit corporation organized under the laws of the State of Colorado, which Association shall be organized and made effective by Declarant. If title to a Condominium Unit is held by more than one person, the membership related to that Condominium Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium Unit is held. An Owner shall be entitled to one membership for each Condominium Unit owned by him. No person or entity other than an Owner may be a member of the Association and the memberships in the Association may not be transferred except in connection with the transfer of a Condominium Unit; provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit.

6.2 Voting Rights. The Association shall have one class of memberships. Each membership shall be entitled to that percentage of vote as set forth in Exhibit "A"; provided, however, Declarant shall retain the right to elect the Association Board until the happening of either of the following events, whichever occurs first:

6.2.1 Nine (9) Condominium Units having been conveyed by deed from the Declarant to Owners; or

6.2.2 Two (2) years following the date of recording of the Declaration.

6.3 Transfer. Except as otherwise expressly stated herein, any of the rights, interests, obligations or duties of the Association set forth herein or reserved herein may be transferred, assigned, or delegated to any other person or entity; including the engaging of the services of a professional manager or managing agent, subject to the following limitations:

6.3.1 No transfer, assignment or delegation shall relieve the Association or the Board from the obligations and responsibilities set forth in the Declaration;

6.3.2 Any transfer, assignment or delegation shall not revoke or change any of the rights or obligations of any Owners as set forth in the Declaration;

6.3.3 Any agreement for professional management of the Condominium Project, or any other contract providing for the services of the Declarant, may not exceed three (3) years, and such agreement shall be in writing and provide for the termination by either party without cause and without payment of termination fee on ninety (90) days' or less written notice.

6.4 Amplification. The association may exercise any and all other rights or privileges given to it by this Declaration, by its Articles of Incorporation or By-Laws, or as may otherwise be given to it by law reasonable or necessary to carry out its purposes as set forth herein and under the Articles of Incorporation or By-Laws. Notwithstanding any other provision which may be in this Declaration to the contrary, and except as may be provided by statute in the case of condemnation or substantial loss to the Units and/or Common Elements of the Condominium Project, unless at least two-thirds of the first Mortgagees (based upon one vote for each first Mortgage owned), or Owners (other than the sponsor, developer, builder or Declarant) of the individual Condominium Units have given their prior written approval, the Association shall not be entitled to:

6.4.1 By act or omission, seek to abandon or terminate the Condominium Project;

6.4.2 Change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;

6.4.3 Partition or subdivide any Condominium Unit;

6.4.4 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this clause); or

6.4.5 Use hazard insurance proceeds for losses to any Condominium property (whether to Units or Common Elements) for other than repair, replacement or reconstruction of such Condominium property, except as provided by statute in the case of substantial loss to the Units and/or Common Elements to the Condominium Project.

ARTICLE VII. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

7.1 The Common Elements. The Association shall, subject to the rights of the Owners set forth in Article III hereof, be responsible for the exclusive management, control, operation, maintenance, repair and improvement of the 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 cost of such management, operation, maintenance, repair and improvement shall be borne as provided in Article VIII. The Common Elements, and the Association rights and obligations thereto, shall include irrigation water and water rights, ditches and ditch lights, and irrigation facilities installed in or upon the Common Elements such as pumps, pipes, sumps, lines and sprinklers. Title to water and ditch rights shall be held in the name of the Association for the exclusive use and benefit of the Owners of the Condominium Units. The Association shall also maintain Limited Common Element areas designated as "Entries" and "Yards." Other Limited Common Elements not adequately maintained by the Owners having responsibility therefor shall be maintained by the Association and the costs thereof charged back to the Owners having responsibility therefor.

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.

7.2 Miscellaneous Services. 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 Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish lighting, heating, water, trash collection, sewer service, snow removal and other common services to each Unit. The cost of such services shall be borne as provided in Article VIII.

7.3 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of Owners of Units 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 deemed to be owned by the Owners of Units in the proportion of their ownership interest in the Common Elements. Such interest shall not be transferrable 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 of a Unit 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 of Units. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium Unit.



7.4 Administrative Rules and Regulations. Upon majority vote of the Board, the Association may make and the Owners shall comply with rules and regulations governing the use of the Common Elements and personal property for common use, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

7.5 Rights. 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 any obligation of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such obligations or to obtain damages for non-compliance, all to the extent permitted by law. The Association may exercise any right or privilege given to it expressly by this Declaration or by law, 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.

#### ARTICLE VIII. ASSESSMENTS

8.1 Agreement to Pay Assessment. Declarant, for each Condominium Unit owned by him within the Project, and for and as the Owner of the Project and every part thereof, hereby covenants, and each Owner of any Condominium Unit by the acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association regular assessments made by the Association for the purposes provided in this Declaration, and special assessments for the matters as provided in Section 8.5 or elsewhere in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

8.2 Amount of Regular Assessments. The regular assessments against all Condominium Units shall be based upon advance estimates by the Association to provide for the payment of all estimated expenses for a period of one year arising out of or connected with the maintenance and operation of the Common Elements and furnishing utilities and other services to the Units. Said estimated expenses may include management; irrigation water fees or charges; insurance premiums; landscaping and care of the Common Elements and Buildings; utilities for the Common Elements such as lighting, heating, water and electricity; snow removal; trash and garbage collection; sewer service; repairs, replacements and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The Association shall also create a reasonable and adequate contingency reserve, surplus or sinking fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis, assessments for such reserve, surplus or sinking fund to be paid in regular monthly installments rather than by special assessments.

8.3 Apportionment of Assessments. Any assessments (both regular or special) assessed pursuant hereto against all Owners shall be assessed to all Owners in proportion to their percentage interests in the Common Elements as stated on Exhibit "A." Any assessments assessed pursuant hereto against less than all of the Owners shall be assessed to such Owners in proportion to their percentage interests computed by dividing an Owner's percentage interest in Common Elements by the sum total of all percentage interest in Common Elements excluding from such total the percentage interest in Common Elements of the Owners who are not to be assessed.

8.4 Notice of Regular Assessments and Time for Payment Thereof. Following the determination of regular assessments, the Association shall give written notice to each Owner as to the amount of the regular assessment with respect to his Condominium Unit on or before the first day of each calendar year. Regular assessments shall be paid without the requirement of further notice in twelve (12) equal monthly installments, the first installment being due the 1st day of the first month of the year for which the regular assessment is made, and the 1st day of each month thereafter until paid in full. Monthly installments of the regular assessments shall be due and payable no later than the 10th day of each month or be declared delinquent. Delinquent payments of regular assessments shall bear interest from the date of delinquency until paid at eighteen (18) percent per annum. Failure of the Association to give timely notice of the annual regular assessment as provided herein shall not affect the liability of the Owner of any Condominium Unit for such regular assessment, but the date when the monthly payments shall commence in such case shall be ten (10) days after such notice shall have been given. In the event an Owner shall fail to bring delinquent regular assessments current within twenty (20) days of written notice of delinquency given by the Association, together with interest and penalties thereon, if any, the Association may accelerate and declare immediately due and payable the balance of such Owner's regular assessment of that year. Upon acceleration, unpaid regular assessments, interest and penalties shall be deemed principal, and shall draw interest from the date of acceleration at the same rate as delinquent regular assessments.

8.5 Special Assessments. In addition to the monthly regular assessments authorized by this Article, the Association may levy special assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, capital improvements authorized by a two-thirds vote of the Association membership, deficiencies in operating funds from regular assessments, or for any other expense incurred or to be incurred as provided in this Declaration. This section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized hereunder by other Sections of the Declaration which shall make specific reference to this Article. Any amounts assessed pursuant hereto against all Owners shall be assessed to all Owners in proportion to their percentage interests in the Common Elements. Any amounts assessed pursuant hereto against less than all of the Owners shall be assessed to such Owners in proportion to their percentage interests computed by dividing an Owner's percentage interest in Common Elements by the sum total of all percentage interests in Common Elements excluding from such total the percentage interests in Common Elements of the Owners who are not to be assessed. Notice in writing of the amount of such special assessments and the time and method of payment thereof shall be given promptly to the Owners. Payment of a special assessment may be made in any manner deemed reasonable or necessary by the Association, including monthly installments. A special assessment shall be deemed delinquent if not paid within thirty (30) days of the due date if the same is payable in a single payment, or within ten (10) days of the due date of each month, if the same is due in monthly installments. Delinquent special assessments hereunder shall bear interest at the same rate as for delinquent regular assessments pursuant to Section 8.4, and the Association may accelerate the balance due of any special assessment remaining delinquent following twenty (20) days written notice in the same manner as regular assessments.

8.6 Lien for Assessments. All sums assessed to any Condominium Unit pursuant to this Article, together with interest

thereon as provided herein, shall be secured by 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 for: (a) valid tax and special assessment liens on the Condominium Unit in favor of any governmental assessing authority; (b) a lien for all sums unpaid on the first Mortgage duly recorded in the Mesa County, Colorado, real estate records including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any Condominium Unit after the Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence the lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed by the Association and may be recorded in the office of the County Clerk and Recorder of Mesa County, Colorado. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Colorado. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay the Association any assessments against the Condominium Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, encumber and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the Mesa County, Colorado, real estate records, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

Upon the written request of any encumbrancer of a Condominium Unit, specifically including any first Mortgagee, the Association shall give written notification of any default in the performance by any individual Condominium Unit Owner of any obligation under the Declaration or Association Articles of Incorporation or By-Laws not cured within sixty (60) days of such default, specifically including any assessments remaining unpaid for a period of sixty (60) days following the date they are due and payable.

**8.7 Personal Obligations of Owner.** The amount of any assessment against any Condominium Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Condominium Unit.

8.8 Statement of Account. Upon payment of a reasonable fee to be determined from time to time, but not to exceed \$35, and upon ten (10) days advance written request in the manner provided in Section 19.2 hereof, of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium Unit, the Association shall issue a written statement of his account setting forth the amount of the unpaid assessments, if any, with respect to such Condominium Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its lien subsequent to requesting such statements. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the twenty-day period provided herein, and the purchaser subsequently acquires the Condominium Unit.

8.9 Personal Liability of Purchaser or Successor for Assessments. Subject to the provisions of Section 8.8, a purchaser or successor in title to a Condominium Unit shall be jointly and severally liable for all unpaid assessments against the Condominium Unit up to the time of the grant of conveyance, without prejudice to the purchaser's or successor's right to recover from the seller or predecessor in interest the amount paid for such assessments; provided, however, any first Mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the Mortgage or the foreclosure of Mortgage, shall not be liable for such Condominium Unit's unpaid dues, charges or assessments which accrue prior to the acquisition of title to such Condominium Unit by the Mortgagee.

8.10 Inspection of Records. Any Owner or Mortgagee may inspect the records of the receipts and expenditures of the Board, pursuant to § 38-33-107, C.R.S. 1973, at convenient weekday business hours.

#### ARTICLE IX. USE OF CONDOMINIUM UNITS AND COMMON ELEMENTS.

##### 9.1 Use of Condominium Units.

9.1.1 Each Condominium Unit shall be used for a single family residential purpose only. Lease or rental of a Unit for lodging or residential purposes shall not be considered to be a violation of this covenant; provided, however, each Owner shall use due care and diligence in leasing their Units regarding the good character habits and general desirability of the tenants.

9.1.2 No Condominium Unit may be used for commercial purposes of any type whatsoever excepting for home occupations. For the purposes of this Subsection, "home occupations" shall mean an occupation by the resident conducted totally within the Unit which does not entail the employment of third persons on the premises and does not entail the delivery of goods or services to customers upon the premises. For illustration purposes, but not by limitation, an insurance agent may use his Unit as a personal office so long as customers are not permitted to come to the Unit; however, the establishment of a barber shop or beauty shop would be prohibited.

9.1.3 No Condominium Unit shall be structurally altered in such a fashion as to affect the bearing capabilities of the Building or affect plumbing, electrical or other utilities within the Common Elements, without the prior written consent of the Association. Furthermore, any interior decorations such as window coverings shall be of the type, quality, color and style consistent with the residential character and exterior appearance of the Building, and shall be subject to approval by the Architectural Control Committee.

## 9.2 Use of General Common Elements.

9.2.1 There shall be no obstruction of the General Common Elements, nor shall any personal property of any Owner be stored on any part of the General Common Elements without the prior written consent of the Association.

9.2.2 It is the specific and underlying intent of the Declarant to preserve and protect the visual appearance of the Condominium Project. Accordingly, no improvement upon the General Common Elements shall be removed, changed, replaced or modified, whether by repair, maintenance or restoration, in such a manner so as to alter the visual appearance of the Condominium Project without the prior written consent of the Association. Furthermore, no Owner, or their guests or invitees, shall erect, store, maintain or construct anything upon the General Common Elements except upon the written consent of the Association.

## 9.3 Use of Limited Common Elements.

9.3.1 The Limited Common Elements shall be solely used by the Owners in such a fashion to be consistent with the residential character and visual appearance of the Condominium Project. No Owner shall obstruct, or store his personal property, on any part of a Limited Common Element reserved for the use of more than one Owner, without the consent of the other Owners having the use of such Limited Common Elements.

9.3.2 All plantings and personal property of the Owners kept, maintained or used upon the Limited Common Elements shall be consistent with the residential character and visual appearance of the Condominium Project, and shall be subject to approval by the Architectural Control Committee, provided, the following items shall be specifically prohibited: (a) the use of clotheslines or other outside clothes drying or airing facilities; (b) antennas for transmission or reception of television signals or any other form of electromagnetic radiation; and (c) children's play or swing sets.

9.3.3 No Limited Common Element shall be enclosed or covered by any permanent or temporary structure or device without the prior written consent of the Association.

## 9.4 Prohibition of Damage and Certain Activities.

9.4.1 Nothing shall be done or kept in any Unit in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or which would result in an increase in the rate of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association.

9.4.2 Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would be in

violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority.

9.4.3 No damage to, or waste of the Common Elements or any part thereof shall be committed by any Owner, or any guest or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all such losses resulting from any damage or waste caused by him or his guests or invitees.

9.4.4 No noxious, destructive, boisterous or offensive activity shall be carried on or in any Unit or on or in the Common Elements or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any other person at any time lawfully residing upon the Condominium Project. The Board of Managers shall have sole and absolute discretion in determining whether any activity shall be noxious, destructive, boisterous or offensive. The Board of Managers has the authority to open judgment upon such question to a vote of the memberships of the Association.

9.4.5 No signs shall be permitted upon the Condominium Project except for a sign or signs placed upon the Common Elements or Units by the Declarant, and except signs placed within Units or upon the Common Elements advertising an Owner's Condominium Unit for lease or sale not to exceed six (6) square feet in total area on one side and after first obtaining the Association's consent.

#### 9.5 Parking and Storage of Vehicles and Personal Property.

9.5.1 All motor vehicles and golf carts of the Owners and permanent occupants of the Project shall be kept and stored in the underground garage parking and storage areas as designated on the Condominium Map. No Owner or permanent occupant shall keep, maintain or store any motor or recreational vehicle on the ground level outside parking area, which shall be reserved for the sole and exclusive use of the guests and invitees of the Owners and permanent occupants of the Condominium Project.

9.5.2 All personal property of the Owners or permanent occupants of the Units, not kept or stored within a Unit, and except for approved personal property kept or maintained on Limited Common Elements (such as patio furniture), shall be kept and stored in storage areas provided at the basement level of the Building designated for such Unit.

9.5.3 For the purposes of this Article IX, "permanent occupants" shall be deemed to include any person who continuously resides in a Condominium Unit, inclusive of the Owner, his immediate family, or his tenants. "Guests" or "invitees" shall be any person who occupies or resides in a Condominium Unit temporarily upon the invitation, request or consent of the Unit Owner, or his tenant. The Board of Managers shall have the sole and exclusive jurisdiction and discretion in determining whether a person is a "permanent occupant" or "guest or invitee" in the event such a question arises. However, without limiting the discretion of the Board, it is intended by the Declarant to permit the Unit Owners to have guests and invitees who may stay for periods up to several weeks, such as family members who are visiting, however, persons who stay in excess of thirty (30) days continuously shall be presumed a permanent occupant.

#### 9.6 Occupants and Pets.

9.6.1 There shall be no permanent occupant who shall be younger than sixteen (16) years of age.

9.6.2 The number of permanent occupants per Condominium Unit shall not exceed two (2) permanent occupants per bedroom.

9.6.3 Each Owner shall be limited to a reasonable number of household pets. Upon the complaint of any Owner, and in the sole discretion of the Association's Board of Managers, all pets constituting a nuisance to any Owner or occupant may either be removed at the order of the Board of Managers, or restricted to the interior of as Owner's Unit.

9.7 Garbage and Trash. All garbage, rubbish and trash shall not be allowed to accumulate on the Common Elements and shall be placed and kept in covered containers in the trash storage area designated on the Condominium Map.

9.8 Fireplaces. The Owners of Condominium Units B, C, H or I shall have the right to require the Owners of Condominium Units A, D, E, F, G, J, K, and L to discontinue use of their fireplaces or convert to natural gas burning fireplaces in the event smoke or fireplace discharge becomes an annoyance or nuisance to the Owners of Condominium Units, D, C, H or I.

9.9 Enforcement. Without limiting any Owner or the Association in any proceeding at law or in equity to enforce any term or provision of this Declaration, specifically including the restrictions contained in this Article IX, the following enforcement remedies shall be allowed:

9.9.1 Any Owner shall be personally liable for any loss or damage to the Common Elements as a result of his violation of any provision in this Article IX, including violations caused by permanent occupants, guests or invitees of his Unit, inclusive of tenants and family members. The Association may levy a special assessment against such Owner for such losses or damages, and collect and recover the same against such Owner in the same manner as any other special assessment may be collected or recovered as provided in Article VIII of the Declaration.

9.9.2 The Association may on behalf of all Owners, or any Owner may on behalf of himself, commence and maintain any legal proceeding at law or in equity for the purpose of recovering damages for, or abating or enjoining, any violation of this Article IX. In such legal proceedings, the Association shall on behalf of all Owners, or any Owner shall on behalf of himself, be entitled to recover their legal costs and expenses incurred for such legal proceedings, including a reasonable attorney's fee.

#### ARTICLE X. ARCHITECTURAL CONTROL COMMITTEE.

No additions, modifications, improvements or alterations to the Common Elements shall be commenced, erected or maintained, nor shall any exterior addition or change to the Building be made, until the plans and specifications showing the nature, kind, shape, height, materials and location shall have been first submitted to and approved in writing as to the harmony of external design, consistency with the Declaration, and location in relation to the Building and topography by the Board of Managers of the Association, or an Architectural Control Committee composed of three (3) Owners appointed by the Board. In addition, the Board, or Architectural Control Committee appointed by the Board, shall have the authority to examine and approve the Unit's window coverings which are visible to the exterior and the permanent occupant's personal property kept or

maintained on the Limited Common Elements to insure consistency of the same with the external design and color of the Building and residential character of the Condominium Project. In the event said Board, or its designated Committee, fails to approve or disapprove the design within thirty (30) days after said plans and specifications have submitted to it, or within thirty (30) days the Committee first takes action to examine and approve window coverings or personal property kept on Limited Common Elements, approval shall not be required and this Article will be deemed to have been fully complied with. Neither the Board, nor its designated committee, shall have any liability to any person or Owner submitting requests for approval by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to any request, examination or consent.

#### ARTICLE XI. INSURANCE.

11.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the insurance coverage described below to be provided by companies authorized to do business in the State of Colorado. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to the insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

11.1.1 Property Insurance. The Association shall obtain insurance on the entire Condominium Project providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than 100% of the insurable value (based on replacement cost). Such insurance shall include, but not be limited to, fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection.

11.1.2 Liability Insurance. The Association shall maintain and keep in full force and effect at all times a comprehensive policy of public liability insurance covering all of the Common Elements and public ways in the Condominium Project. Such coverage may include, without limitation, liability for personal injury, water damage, contractual relations, operation of automobiles on behalf of the Association and activities in connection with the ownership, operation, maintenance and other use of the Condominium Project. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Condominium Unit Owner because of negligent acts of the Association or other Unit Owners. The scope of coverage must include such other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

11.1.3 Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

11.1.4 Fidelity Insurance. The Association may purchase fidelity coverage against dishonest acts on the part of the Directors, Managers, Trustees, employees or



volunteers responsible for handling funds belonging to or administered by the Association. If purchased, the fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

11.1.5 Other. The Association may obtain insurance against such other risks, as it may deem appropriate with respect to the Condominium Project, including any personal property of the Association located thereon.

11.2 Owner's Responsibility. Insurance coverage on the furnishings and other items of personal property belonging to an Owner and casualty and public liability coverage within each individual Unit and for activities of the Owner, not acting by the Association, with respect to the Common Elements shall be the responsibility of the respective Owners.

### 11.3 Form.

11.3.1 The name of the insured under each required policy must be stated in form and in substance similar to the following:

"700 Golfmore Association, Inc. for the use and benefit of the Owners of Condominium Units in Viking Condominiums."

11.3.2 Each required policy must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Condominium Project is located providing that any proceeds shall be paid to the Association for the use and benefit of the mortgagees as their interests may appear.

11.3.3 The Mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named therein at least ten (10) days in advance of the effective date of any reduction in or cancellation of such policy.

11.3.4 Each hazard insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holders rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the State of Colorado.

11.4 Insurance Proceeds. The Association shall receive the proceeds of any property insurance payments received under policies obtained by it and maintained by it pursuant to this Article. The Association shall apportion the proceeds to the portions of the Project which have been damaged and shall determine the amount of the proceeds attributable to damage to the Common Elements. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed to each of the Owners thereof in accordance with their respective interests therein, with joint payments being made to the Owner and the Mortgagees where the

Association has written notice of the existence of a Mortgage. Each Owner, Declarant, and each Mortgagee shall be bound by the apportionments of damage and of the insurance proceeds made by the Association pursuant hereto.

#### ARTICLE XII. CASUALTY DAMAGE OR DESTRUCTION.

12.1 Affects Title. Title to each Condominium Unit is hereby made subject to the terms and conditions hereof, which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Condominium Unit.

12.2 Association as Agent. The Declarant and all of the Owners irrevocably constitute and appoint the Association their true and lawful agent in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute appointment of the attorney in fact herein provided.

12.3 General Authority of Association. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Condominium Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same condition in which it existed prior to damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance of the Association collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners representing an aggregate ownership interest of 80% or more of the Units, excluding Units owned by the Association, and all first and second Mortgagees agree not to rebuild.

In the event any such Mortgagee should not agree not to rebuild, the Association shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if the Owners representing an aggregate ownership interest of 80% or more of the Units, excluding Units owned by the Association, are in agreement not to rebuild. The Association shall obtain the funds for such purpose by special assessments under Article VIII of this Declaration.

12.4 Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the Project, the Association shall obtain reliable and complete estimates of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

12.5 Repair or Reconstruction. As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be accordance with the original plans or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by any more than 5% from the number of cubic feet and the number of square feet as originally constructed pursuant to such original plans and specifications, and the location of the building shall be substantially the same as prior to the damage or destruction.

12.6 Funds for Reconstruction. If the proceeds of any insurance collected are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article VIII hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such special assessment shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

12.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 12.6 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made, or would have made had there been an assessment(s), pursuant to Section 12.6 of this Declaration.

12.8 Decision Not to Rebuild. If the Owners representing an aggregate ownership interest of eighty (80) percent or more of the Units, excluding Units owned by the Association, and all holders of first and second mortgages on Condominium Units agree not to rebuild, the Project shall be sold and the proceeds distributed in the same manner herein provided in the event of sale of obsolete Units, as set forth in Section 13.4.

#### ARTICLE XIII. OBSOLESCENCE.

13.1 Adoption of a Plan. The Owners representing an aggregate ownership interest of eighty (80) percent or more of the Units, may agree to adopt a written plan for the renewal or reconstruction, which plan shall have the unanimous approval of all first and second Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in the Mesa County, Colorado, real estate records.

13.2 Payment for Renewal or Reconstruction. The expense of renewal or reconstruction shall be payable by all of the Owners as special assessments against their respective Condominium Units. These special assessments shall be levied in advance pursuant to Article VIII hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal or reconstruction. In the event amounts collected pursuant to this Section are in excess of the amounts required for renewal or reconstruction, the excess shall be returned to the Owners by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

13.3 Dissents From the Plan. An Owner not a party to such a plan for renewal or reconstruction may give written notice of dissent to the Association within fifteen (15) days after the recordation of such plan. The Association shall then give written advice of such dissents to all the Owners within five (5) days after the expiration of such fifteen-day period. Within fifteen (15) days of receipt of such notice from the Association, the Owners representing an aggregate ownership of more than fifteen (15) percent of the Units, may cancel the plan by written instrument recorded in the Mesa County, Colorado, real estate records. If the plan is not cancelled, then the Condominium Units of each dissenter shall be purchased according to the procedures set forth herein. If the Owner and the Association

can agree on the fair market value thereof, then such sale and conveyance shall be completed within sixty (60) 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 (10) days following the commencing date, each party shall nominate a qualified appraiser by written nomination and shall give notice of such nomination to the other. If either party fails to make such nomination, the appraiser nominated shall, within five (5) 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 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 persons so nominated, one shall be drawn by lot by a judge of the court of record in Colorado, and the person whose name is so drawn shall be the umpire. The nominations from among which the name of the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. In the event one of the appraisers fails to nominate the two (2) qualified appraisers for selection by a judge, then the judge shall select the umpire from the names of those two (2) qualified appraisers submitted by the other appraiser. The decision of the appraisers as to the fair market value or in the case of their disagreement, the decision of such 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 sixty (60) days after decision of the appraisers, and the Association as attorney in fact shall disburse the proceeds first to lienors in the order of the priority of their liens and the balance remaining to the Condominium Unit Owner. The obligation of the Association to make such purchase shall be conditioned on the fair market value of the Condominium Unit exceeding the obligations secured by liens on such Condominium Unit, and upon the marketability of the title of the Owner. The Owner shall furnish the Association an appropriate abstract of title or commitment for title insurance evidencing marketability of his title not less than fifteen (15) days prior to the date set for completion of the sale.

The Association, pursuant to Article VIII hereof, may levy a special assessment sufficient to provide funds to pay for the Condominium Units of the dissenters, provided that such assessments shall not apply to any of the Owners who are among the dissenters and shall not be liens against the Condominium Units of such Owners.

**13.4 Sale of Obsolete Unit.** The Owners representing an aggregate ownership interest of eighty (80) percent or more of the Units, excluding Units owned by the Association, may agree that the Condominium Units are obsolete and that the Project should be sold. Such an agreement must have the unanimous approval of every first and second Mortgagee of record at the time such agreement is made. 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 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, the Condominium Map and the Articles of Incorporation and By-Laws of the Association, or any amendments or supplements thereto. The sale proceeds shall be apportioned among the Owners in proportion to their percentage interests in the Common Elements, and such apportioned proceeds shall be paid

into separate accounts, each such account representing one Condominium Unit. Each such account shall remain 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 amount of such accounts without contribution from one account to the other, first to lienors in the order of the priority of their liens and the balance remaining to each respective Owner.

In the event any Mortgagee should not agree to the sale of the Project, the Association shall have the option to purchase the Mortgage of such Mortgagee by payment in full of the amount secured thereby if the Owners representing an aggregate ownership interest of eighty (80) percent or more of the Units, excluding Units owned by the Association, are in agreement to sell. The Association shall obtain the funds for such purpose by special assessments under Article VIII of this Declaration.

#### ARTICLE XIV. CONDEMNATION.

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

14.2 Proceeds. All compensation, damages, or other proceeds therefrom the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

14.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their percentage interests in Common Elements, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then, in determining such shares, the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principal set forth in the last preceding paragraph, the Association shall as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. The Association shall distribute the Condemnation Award as soon as practicable thereafter to the parties in the shares so determined, such distribution to be made by checks payable jointly to the respective Owners and their respective Mortgagees.

14.4 Partial Taking. In the event that less than the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: as soon as practicable, the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among all Owners in proportion to their percentage interests in Common Elements, (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his

own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

14.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter, the Association shall reallocate the ownership interest in the Common Elements and percentage vote determined in accordance with the Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided in Article XV hereof.

14.6 Reconstruction and Repair. Any reconstruction and repair necessitated by the condemnation shall be governed by the procedures specified in Article XII hereof.

#### ARTICLE XV. REVOCATION OR AMENDMENT TO DECLARATION AND MAP.

Subject to Section 17.5 on the Declarant's right to amend, this Declaration shall not be revoked nor shall any of the provisions herein be amended except upon the written instrument duly recorded reflecting the consent of eighty (80) percent of the Unit Owners and the unanimous consent of the holders of all first and second Mortgages on Units.

#### ARTICLE XVI. PERIOD OF CONDOMINIUM OWNERSHIP.

The Condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration and any amendments thereto are revoked in the manner provided in Article XV of this Declaration or until terminated in the manner provided in Articles XIII (Obsolescence) or XIV (Condemnation.)

#### ARTICLE XVII. MISCELLANEOUS.

17.1 Compliance with Provisions of Declaration and Articles of Incorporation and By-Laws of the Association. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, 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, damages or injunctive relief or both, costs and expenses of such proceeding and all reasonable attorneys' fees. Such action shall be maintainable by the Association on behalf of the Owners.

17.2 Registration of Mailing Address; Notices. Each Owner shall register his mailing address with the Association and all notices, requests or demands intended to be served upon any Owner, except for budget statements, notices of meetings and other routine notices, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. Unless otherwise provided herein, budget statements, notices of meetings and other routine notices may be sent by regular mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, requests or demands intended to be served upon the Association shall be given by registered or certified

mail, postage prepaid, to the address of the Association as designated in the Articles of Incorporation or By-Laws of the Association. All notices, requests or demands to be served on Mortgagees pursuant hereto shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for in this section.

17.3 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have conveyed said interest as provided herein, but the Owner of a Condominium Unit shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

17.4 Transfer of Declarant's Rights. Any rights or interests reserved hereby to the Declarant may be transferred or assigned by the Declarant.

17.5 Modifications of Declaration by Declarant. Declarant reserves the right to make modifications, additions or deletions in or to this Declaration as may be required by a mortgage lender or insurer provided, such modifications, additions or deletions will not materially increase the cost of Condominium Units, will not cause material, physical modifications of the Condominium Project and any such changes will not decrease the financial obligations of Declarant as a Unit Owner.

17.6 Warranty. The Declarant disclaims any express or implied warranty of any type whatsoever or any representations made in connection therewith except as is set forth in this Declaration.

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

17.8 Rule Against Perpetuity. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, that such provision shall continue only for the period of the life of John M. Porter, and his now living descendants, and for the survivor of them, plus twenty-one years.

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

17.10 Right of First Refusal. Nothing contained herein shall be deemed to create a right of first refusal on the part of the Association to purchase any Condominium Unit from any Owner.

17.11 Expansion. The Condominium Project shall consist solely of the Real Property and Buildings depicted on the Condominium Map filed of record contemporaneously with this Declaration. No expansion of the Condominium Project is planned or intended on the part of the Declarant.

17.12 Distributions of Proceeds. Notwithstanding anything to the contrary in this Declaration, or the Articles or By-Laws of the Association, no provision of this Declaration, Articles or By-Laws of the Association shall give a Condominium Unit Owner, or any other party, priority over any rights of the first Mortgagee of the Condominium Unit pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for loss to or taking of Condominium Units and/or Common Elements.

17.13 Restrictions on Alienation. Nothing contained in the Declaration shall constitute a restriction upon the sale, lease, restraint or free alienability of any Condominium Unit by the Owner thereof.

17.14 Recreational Facilities. There are no recreational facilities planned or intended for the Condominium Project by the Declarant, specifically including, but not by way of limitation, swimming pools, party rooms, saunas or tennis courts.

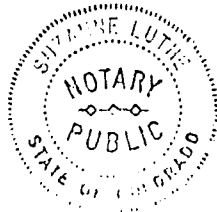
17.15 Applicability. This Declaration shall be binding upon the undersigned, his successors and assigns.

THIS DECLARATION is executed as of the 10<sup>th</sup> day of November, 1981.

  
John M. Porter

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF MESA            )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 1981, by John M. Porter.  
Witness my hand and official seal.  
My Commission expires: 11-5-84.



  
Suzanne Lutte  
Notary Public

Address: P.O. Box 430

Grand Junction, Co 81502



EXHIBIT "A" TO DECLARATION - VIKING CONDOMINIUMS  
DATED \_\_\_\_\_, 1981

<u>UNIT DESIGNATION</u>	<u>INTERIOR SQUARE FOOTAGE</u>	<u>PERCENT OF OWNERSHIP OF COMMON ELEMENTS AND PERCENT OF VOTE</u>
A	3014.32	9.9262
B	2466.50	8.1222
C	2605.67	8.5805
D	2237.22	7.3672
E	2199.92	7.2444
F	2872.78	9.4601
G	2554.55	8.4122
H	2779.80	9.1540
I	2639.21	8.6910
J	2267.42	7.4667
K	2090.45	6.8839
<u>L</u>	<u>2639.37</u>	<u>8.6915</u>
Total Units - 12	Total Square Footage 30,367.21	Total 100%