

BOOK 247 PAGE 364

CONDOMINIUM DECLARATION

FOR

700 MONARCH CONDOMINIUM

ASPEN, COLORADO

I N D E X

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CONDOMINIUM DECLARATION

FOR

700 MONARCH CONDOMINIUM

THIS DECLARATION, made and entered into by DALY CONSTRUCTION, INC., a Colorado corporation, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of certain real property situated in the City of Aspen, County of Pitkin, State of Colorado, described as follows:

Lots 1, 2, 3, 4, 5 and 6 in Block 5, Connor's Addition to the City of Aspen, County of Pitkin, State of Colorado; and

WHEREAS, the Declarant has improved and is improving the aforesaid real property with a multi-story building in accordance with plans which are filed of record herewith and which plans constitute a map (hereinafter referred to as "Map") locating the condominium units under the provisions of Section 118-15-5, C.R.S.; and

WHEREAS, said multi-story building contains four levels, of which the first level is devoted primarily to parking, and three levels are devoted to residential apartment units; and

WHEREAS, the Declarant desires to establish a condominium project and does hereby, by filing this Declaration, establish a plan under the Colorado Condominium Ownership Act, for the ownership in fee simple of real property estates consisting of the area or space contained in each of the air space units in said multi-story building and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property; and

WHEREAS, the Declarant desires to establish certain rights and easements in, over and upon said real property for the benefit of itself and all future owners of any part of said real property, and any air space unit or units thereof or therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the property and all air space units; and

WHEREAS, the Declarant desires and intends that the several unit owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property.

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

1. Definitions. Unless the context clearly indicates a different meaning therefor:

(a) "Declaration" means this instrument by which 700 Monarch Condominium is established.

(b) "Apartment" or "apartment unit" means an individual air space unit on the second, third or fourth floor in the building which is contained within the perimeter walls, floors, ceilings, windows, and doors of such unit in the building as shown on the Map, together with all fixtures and improvements therein contained but not including any of the structural components of

the building located in such unit.

(c) "Unit" means an apartment unit together with its undivided interest in the general common elements as is set forth on Exhibit "A" and the limited common elements appurtenant thereto.

(d) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, whose estate or estates, or interest or interests, individually or collectively, aggregate fee simple ownership of one or more units.

(e) "Occupant" means any person or persons, other than the Owner, in possession of a unit.

(f) "Entire premises" or "property" means the hereinabove described real property, all improvements and structures constructed or contained therein, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and property intended for the mutual use, benefit or enjoyment of the unit owners.

(g) "Building" means the building improvement comprising a part of the property and containing the units.

(h) "Majority" or "majority of the unit owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the general common elements. Any specified percentage of the unit owners, whether majority or otherwise, for purposes of voting and for all purposes and wherever provided in this Declaration, shall mean such percentage in the aggregate in interest of the undivided ownership of the general common elements.

(i) "General common elements" means and includes all portions of the property except the units, including but not limited to, the following:

(i) The foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, balconies, halls, corridors, lobbies, stairways, entrances, and driveways of the building;

(ii) The yards, gardens, laundry and locker rooms and automobile parking areas;

(iii) Any installations consisting of equipment and materials making up any central utility systems;

(iv) In general, all apparatus and installations existing for common use;

(v) All pipes, wires, ducts, flues, chutes, conduits, public utility lines (to the outlets) and structural components running through a unit and serving more than one unit or serving, or extending into, the general common elements, or any part thereof;

(vi) All other parts of the property and improvements necessary or convenient to its existence, maintenance and safety, or normally in common use.

(j) "Limited common elements" means those parts of the general common elements which are reserved by the terms hereof for the exclusive use of the owner(s) of one or more, but less than all, units.

(k) "Common expenses" means and includes:

(1) Expenses declared common expenses by provisions of this Declaration and the By-Laws of the Association;

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

(3) All sums lawfully assessed against the general common elements by the Association; and

(4) Expenses agreed upon as common expenses by the members of the Association.

(l) "Association" means a Colorado corporation, not for profit, its successors and assigns, the Certificate of Incorporation and By-Laws of which shall govern the administration of this condominium property and the members of which shall be all of the owners of the units. The name of such corporation shall be 700 Monarch Condominium Association, Inc., or a similar name.

(m) "Board" means the Board of Managers of the Association.

2. Division of Property into Condominium Units. The real property hereinabove described is hereby divided into the following fee simple estates: Twenty (20) separately designated apartment units and the undivided interest in and to the general common elements appurtenant to each unit as is set forth on Exhibit "A" attached hereto and, by this reference, made a part hereof.

3. Combination and Division of Units. Declarant hereby reserves the right for itself, its successors and assigns, to physically combine the area or space of one apartment unit with the area or space of one or more adjoining apartment units, and the aggregate of the undivided interests in and to the general common elements appurtenant to such combined units shall be appurtenant to the one enlarged unit which shall result from such combination. In the event of such a combination, Declarant shall cause to be filed for record an amendment to Exhibit "A" and to the Map describing and depicting any such combination. Declarant hereby reserves the right for itself, its successors and assigns, to designate portions of the general common elements contained within the perimeter walls, floors, ceilings, windows and doors of any unit which shall result from a combination as aforesaid, as limited common elements reserved exclusively for use by the owners of such unit resulting from a combination and to convey appurtenant interests therein to any such owners.

4. Limited Common Elements.

(a) The balcony or balconies and patio or patios which adjoin an apartment unit and which are accessible therefrom, shall be a limited common element reserved exclusively for use by the owners of such unit, to the exclusion of all other owners, except by invitation.

(b) The Board or the Declarant shall have the right, by rule or regulation, to number and assign to any apartment unit owner the exclusive privilege to use any particular storage locker located in the first level of

the building and to post such signs with respect thereto as the Board or Declarant deems appropriate. Any storage locker so assigned to a unit owner shall be a limited common element reserved exclusively to the owners of such unit, to the exclusion of all other owners, except by invitation.

5. Inseparability of a Condominium Unit. Each unit owner shall at all times be entitled to the percentage of ownership in the general common elements appurtenant to such unit as set forth in Exhibit "A". Each owner shall own such undivided interest in the general common elements as a tenant in common with all the other owners of the property. The percentages of ownership in the general common elements as set forth in Exhibit "A" shall, except as otherwise provided in Paragraph 3 hereinabove, remain constant unless thereafter changed by agreement of all of the owners. Each unit and the undivided interest in the general common elements appurtenant thereto shall together comprise one unit which shall be inseparable and may be conveyed, leased, devised or encumbered only as a unit.

6. Non-Partitionability of General Common Elements. The general common elements shall be owned in common by all of the owners of the units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

7. Description of Condominium Unit. Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a unit by its identifying unit number and symbol followed by the words "700 Monarch Condominium", with further reference to the Map thereof filed for record and the recorded Declaration. Every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect not only the unit but also the general common elements.

and the limited common elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress and use of the general common elements together with the right to the exclusive use of the appurtenant limited common elements.

8. Encroachments and Easements.

(a) In the event that by reason of the construction, reconstruction, settlement, or shifting of the building, or the design or construction of any unit, any part of the general common elements encroaches or shall hereafter encroach upon any part of any unit, or any part of any unit encroaches or shall hereafter encroach upon any part of the general common elements, or any portion of any unit encroaches upon any part of any other unit, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit and the general common elements so encroaching so long as all or any part of the building containing such unit and the general common elements so encroaching shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the general common elements if such encroachment occurred due to the willful conduct of said owner or owners. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or the units.

(b) Easements are hereby declared and granted for utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits, wires, and equipments over, under, along and on any part of the general common elements, as they exist on the date of the recording hereof.

(c) All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof.

(d) Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents; provided, however, that each such deed, mortgage, trust deed or other evidence of obligation shall be deemed to create and reserve such easements and rights as aforesaid notwithstanding the absence therein of any reference thereto.

9. Separate Assessment and Taxation - Notice to Assessor. Declarant shall give written notice to the assessor of the County of Pitkin, Colorado, of the creation of condominium ownership of this property, as is provided by law, so that each unit and the undivided interest in the general common elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation. In the event that for any period of time, any taxes, assessments or other charges of any taxing or assessing authority are not separately assessed to each unit owner, but are assessed on the property as a whole, then each unit owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the general common elements.

10. Title. A 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.

11. Use of General and Limited Common Elements. Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general and limited common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

12. Use and Occupancy.

(a) Each unit shall be used and occupied solely for residential purposes by the owner, or by the owner's family, guests, invitees and tenants, subject to the provisions of this Declaration.

(b) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designated for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in or on any unit. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the property except at such location and in such form as shall be approved by the Board or the managing employee. The right is reserved by the Declarant, or its agent or agents, to place "For Sale" or "For Rent" signs on any unsold or unoccupied units, and on any part of the general common elements, and the right is hereby given to any mortgagee, who may become the owner of any unit, to place such signs on any unit owned by such mortgagee. So long as any unit is owned by it, the Declarant shall be entitled to access, ingress and egress to the building and the property as it shall deem necessary in connection with the construction or sale of the building or any unit. The Declarant shall have the right to use any unsold unit or units as a model or for sales or display purposes.

(c) There shall be no obstruction of the general common elements nor shall anything be stored in the general common elements without the prior consent of the Board except as herein expressly provided. The storage lockers referred to in Paragraph 4 may be used for the purpose intended, subject to the rules and regulations of the Board. 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, dry-wall, panelling, wallpaper, paint, wall and floor tile and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceiling and floors within the unit. Each unit owner shall be obligated to maintain and keep his own unit, its windows and doors, and the balcony or

balconies and patio or patios which may be a limited common element with respect to such unit, in good, clean order and repair. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject to the rules and regulations of the Board. Each owner shall keep the balcony or balconies which may be a limited common element with respect to such unit free and clear of snow, ice and any accumulation of water.

(d) Nothing shall be done or kept in any unit or in the general common elements which will increase the rate of insurance on the building, or contents thereof, without the prior written consent of the Board. No owner shall permit anything to be done or kept in his unit or in the general common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the general common elements.

(e) Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board.

(f) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any unit or in the general common elements.

(g) No noxious or offensive activity shall be carried on in any unit or in the general common elements, nor shall anything be done therein, either wilfully or negligently, which may be or become an annoyance or nuisance to the other owners or occupants.

(h) Nothing shall be done in any unit or in, on or to the general common elements which will impair the structural integrity of the building or which would structurally change the building except as otherwise provided herein, nor shall anything be altered or constructed in or removed from the general common elements except as otherwise herein provided or otherwise

permitted by the Board.

(i) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the general common elements. The general common elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(j) There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches, chairs or other personal property on any part of the general common elements without the prior consent of, and subject to the regulations of, the Board.

(k) Each owner hereby waives and releases any and all claims which he may have against any other owner, the Association, the officers, and members of the Board, the Declarant and managing employee, and their respective partners, officers, employees and agents, for damages to the general common elements, the units, or to any personal property located in the units or general common elements, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

(l) If, due to the act or neglect of an owner, or of a member of his family or of a guest, tenant, invitee, or other authorized occupant or visitor of such owner, damage shall be caused to the general common elements or to a unit or units owned by others, or maintenance, repairs, or replacements shall be required which would otherwise be at the common expense, then such owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance.

(m) No owner shall overload the electric wiring in the building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

13. Termination of Mechanic's Lien Rights and Indemnification. Subsequent to the completion of the improvements described on the Map, no labor

performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit of any other owner not expressly consenting to or requesting the same, or against the general common elements. 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 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 unit at such owner's request or with his consent. The provisions herein contained are subject to the rights of the managing employee or Board as are set forth in Paragraph 15.

14. Administration and Management.

(a) The administration and management of this condominium property shall be governed by the Certificate of Incorporation and By-Laws of the Association. Each unit owner shall be a member of such corporation, which membership shall terminate upon the sale or other disposition by such member of his unit, at which time the new unit owner shall automatically become a member therein.

(b) The Certificate of Incorporation and By-Laws of the Association shall not contain any terms or provisions inconsistent with this Declaration and any such terms or provisions which may be inconsistent with this Declaration shall be null and void and of no effect.

(c) The Association shall be governed by its Board as is provided in the By-Laws of the Association. The Association shall have the power to engage the services of a manager or managing employee, who may be any person, firm or corporation, upon such terms and compensation as the Board deems fit and to delegate to such manager or managing employee any of its duties, powers and functions. Any agreement with a manager or managing employee may provide for the leasing or care of the units.

(d) If any unit is owned by more than one person, the voting rights

with respect to such unit shall not be divided, but shall be exercised as if the unit owners consisted of only one person in accordance with the proxy or other designation made by the persons constituting such unit owner.

(e) The Board may, from time to time, adopt or amend such rules and regulations governing the operation, maintenance, beautification and use of the general common elements and the units, not inconsistent with the terms of this Declaration, as it sees fit, and the owners shall conform to, and abide by, such rules and regulations. Written notice of such rules and regulations shall be given to all owners. A violation of such rules or regulations shall be deemed a violation of the terms of this Declaration.

(f) The members of the Board and the officers thereof shall not be liable to the owners for any mistake of judgment, or any acts or omissions made in good faith as such members or officers. The owners shall indemnify and hold harmless each of such members or officers against all contractual liability to others arising out of contracts made by such members or officers on behalf of the owners unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any owner arising out of any contract made by such members or officers or out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as his percentage interest in the general common elements bears to the total percentage interest of all the owners in the general common elements. Each agreement made by such members or officers shall be executed by such members or officers, as agents for the Association.

(g) In the event of any dispute or disagreement between any owners relating to the property, or any question of interpretation or application of the provisions of the Declaration, the determination thereof by the Board shall be final and binding on each and all of such owners.

15. Reservation for Access - Maintenance, Repair and Emergencies.

The owners shall have the irrevocable right, to be exercised by the managing employee or Board, to have access to each unit from time to time during

reasonable hours as may be necessary for the painting, maintenance, repair, reconstruction, or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general common elements or to another unit or units, or when such access is reasonably calculated to protect the health, safety or property of any owner or occupant.

Damages to the interior or any part of a unit or units resulting from the painting, maintenance, repair, emergency repair, reconstruction or replacement of any of the general common elements or as a result of emergency repairs within another unit at the instance of the Association shall be a common expense of all of the owners, subject, however, to the provisions of sub-paragraph (1) of Paragraph 12 hereof. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

Subject to the provisions of sub-paragraph (1) of Paragraph 12 hereof, and except as herein otherwise specifically provided, all maintenance, repairs, reconstruction and replacements as to the general common elements, whether located inside or outside of units, shall be the common expense of all of the owners.

16. Grantees. Each grantee of the Declarant, by the acceptance of a deed of conveyance, or each purchaser under Articles of Agreement for Deed, accepts the same subject to all terms, provisions, easements, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration and the Certificate of Incorporation and By-Laws of the Association, and the provisions of the Colorado Condominium Ownership Act, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and

shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

17. Parking. The first level of the building shall be used for parking purposes and such other purposes for which it is intended and as may be prescribed by any rules or regulations at any time adopted by the Board; provided however, that no owner shall have any responsibility or liability if a guest, tenant or invitee of such owner parks an automobile in a parking space contrary to any such rule or regulation.

18. Insurance.

(a) The Board, or the managing employee on behalf of the Board, shall obtain and maintain at all times:

(i) Insurance for the property against loss or damage by fire and such other hazards as are covered under standard extended coverage, vandalism and malicious mischief endorsements for the full insurable replacement cost of the general common elements and the units and such other casualty insurance as the Board deems advisable for the protection of the general common elements and the units. The insurance shall be carried in blanket policy form naming the Association the insured as either attorney-in-fact, or as trustee, for each of the owners in the percentages established in Exhibit "A" hereto. Each owner, other than the Declarant, shall notify the managing employee and the Board in writing of any additions, alterations or improvements to his unit and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure so to notify the managing employee and the Board. The Board or the managing employee shall use reasonable effort to obtain insurance on any such additions, alterations or improvements if such owner requests it to do so and if such owner shall make arrangements satis-

factory to the managing employee and the Board to reimburse them for any additional premiums attributable thereto; and in the absence of insurance on such additions, alterations or improvements, the Board shall not be obligated to apply any insurance proceeds to restore the affected unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. All such policies of insurance shall insure additions, alterations or improvements made by the Declarant. All such policies of insurance shall contain standard mortgage clause endorsements in favor of the mortgagee of each unit and that such policy shall not be terminated, cancelled or substantially modified without at least ten (10) days prior written notice to the mortgagee of each unit and to each owner.

(ii) Comprehensive public liability and property damage insurance in such limits as the Board shall deem desirable insuring the Association, the members of the Board, the managing employee, and their respective agents and employees, and the owners from any liability in connection with the general common elements.

(iii) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Board shall elect to effect.

(b) Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Board shall be common expenses.

(c) The Board may (but shall not be required to), in its sole discretion, secure insurance policies that will provide for one or more of the following:

(i) with respect to the insurance provided for in (a)(ii) of this sub-paragraph, for coverage of cross liability claims of one insured against another;

(ii) with respect to the insurance provided for in (a)(i) of this sub-paragraph, a waiver of subrogation by the insurer as to

any claims against the managing employee, the owners and their respective agents, employees and guests;

(iii) with respect to the insurance provided for in (a)(i) of this sub-paragraph, that the policy cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual owners, or on account of the conduct of any officer or employee of the Association or managing employee without, in the latter case, a prior demand in writing that the Association or managing employee cure the defect;

(iv) with respect to the insurance provided for in (a)(i) of this sub-paragraph, that the insurer shall not have the option to restore the premises, if the property is sold as provided in Paragraph 25(c) hereof.

(v) with respect to the insurance provided for in (a)(i) of this sub-paragraph, that any "no other insurance" clause in such policy exclude policies of insurance maintained by any owner or his mortgagee from consideration and that no such insurance policy coverage under (a)(i) of this sub-paragraph be brought into contribution with insurance purchased by any owner or his mortgagee.

(d) Any owner may obtain additional insurance at his own expense; provided that:

(i) a copy of each such policy (except for a policy with coverage only as provided in (f) of this sub-paragraph) is furnished to the Board within thirty (30) days after it is purchased;

(ii) no such insurance may be maintained which would adversely affect or invalidate any insurance (or any recovery thereunder) carried by the Board or decrease the amount which the Board would realize under any insurance policy the Board is maintaining;

(iii) such insurance policy shall contain a waiver of subrogation in like manner as is provided for in (c)(ii) of this sub-paragraph.

(e) The Board may engage the services of any bank or trust company authorized to do business in Colorado to act as trustee or agent on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds under any policy provided for in (a) (i) of this sub-paragraph and resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of this Declaration. In the event of any loss resulting in the destruction of the major portion of one or more units, the Board shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or owner of any unit so destroyed. The fees of such corporate trustee shall be common expenses.

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

19. Additions, Alterations and Improvements of the General Common Elements. There shall be no alterations, additions to, or improvements on, the general common elements (other than for purposes of replacing or restoring portions thereof) requiring an expenditure in excess of Two Thousand Dollars without the prior approval of 66-2/3% of the owners.

20. Assessment for Common Expenses.

(a) All owners shall be obligated to pay the estimated assessments imposed by the Board. The limited common elements shall, except as is in this Declaration otherwise provided, be maintained as general common elements and the owners having exclusive use thereof shall not be subject to any special charges or assessments. Anything herein to the contrary notwithstanding, the Declarant shall not be obligated to pay any assessments for common expenses with respect to any unoccupied unit or units owned by the Declarant, excepting only that portion allocable to such unit or units of the premiums for insurance maintained by the Board as provided in Paragraph 18 hereof.

(b) The payment due for any month in connection with the assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of a month.

(c) The assessments made for common expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Board shall from time to time determine is to be paid by all of the condominium unit owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things, taxes and special assessments, until separately assessed; premiums for insurance; landscaping and care of grounds; common lighting and heating; repairs and renovations, trash collections; wages; water charges; legal and accounting fees; expenses and liabilities incurred by the managing employee or Board under or by reason of this Declaration; for any deficit remaining from a previous period; as well as other costs and expenses relating to the general common elements, and any cost or expense which is a common expense under the provisions of this Declaration. The omission or failure of the Board of Managers to fix the assessment for any period shall not be deemed as a waiver, modification or a release of the owners from their obligations to pay.

(d) At least once each year, the Board shall estimate the annual budget of common expenses (the "annual budget") including the total amount required for the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services in connection with the general common elements, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall notify each unit owner in writing as to the amount of such estimate with reasonable itemization thereof. Said annual budget shall be assessed to the unit owners according to each unit owner's percentage of ownership in the general common elements as set forth in Exhibit "A". On or before January 1st and July 1st of the ensuing year,

each owner shall be obligated to pay to the Board, or to the managing employee, 1/2 of the assessment made pursuant to this paragraph. On or before the 1st day of February of each calendar year commencing 1971, the Board or managing employee shall supply to all unit owners an itemized accounting of the common expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner's percentage of ownership in the general common elements to the next installment due from owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each unit owner's percentage of ownership in the general common elements to the installment next due after rendering of the accounting. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserve. If said annual budget proves inadequate for any reason, including non-payment of any owner's regular or special assessment, the Board may at any time levy a further assessment, which shall be assessed to the unit owners according to each unit owner's percentage of ownership in the general common elements. The Board or managing employee shall serve notice of such further assessment on all unit owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective and due ten (10) days after the delivery or mailing of such notice of further assessment. All unit owners shall be obligated to pay the adjusted amount.

(e) The failure or delay of the Board to prepare or serve the annual or adjusted budget on the owners shall not constitute a waiver or release

in any manner of the owner's obligation to pay the maintenance and other costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, the owners shall continue to pay the assessment charges at the then existing rate established for the previous period until such new annual or adjusted budget shall have been mailed or delivered.

The Board or the managing employee shall keep full and correct books of account and the same shall be open for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the owner. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the unit owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held in trust for the benefit, use and account of all the owners in the percentages set forth in Exhibit "A".

(f) Until such time as the Board shall have served its first annual budget on the owners, or for such other period as the Board determines, the Board shall have the right to assess the common expenses, as hereinabove provided, on a monthly or other basis and all owners shall pay such monthly or other assessments as advised by the Board or managing employee.

(g) The following expenses or charges incurred by the Board shall be specially assessed to the individual owner to which such expense or charge is applicable (in addition to any other costs, charges or expenses which by law or the terms of this Declaration are payable by an individual owner):

(i) The amount by which any premium for insurance maintained by the Board is increased as a result of any activity or act of such owner, or of any guest, invitee or tenant of such owner.

(ii) The monthly or other fee or compensation and any other

cost or sum which the Board or Association is obligated to pay to the managing employee with respect to a unit under the terms of any agreement with such managing employee.

(h) In addition to the remedies or liens provided by law, or by this Declaration, if an owner is in default in the payment of any aforesaid charge or assessment for thirty (30) days, the Board may bring suit for and on behalf of itself and as representative of all owners, to enforce collection thereof or to foreclose the lien therefor as provided by law or by this Declaration; and there shall be added to the amount due the costs of said suit, together with interest at the rate of 7% per annum, from the due date thereof and reasonable attorney fees to be fixed by the Court. No owner may waive or otherwise escape liability for the assessments or other charges provided for hereby by non-user of the general common elements or abandonment of his or her unit.

(i) Assessments or other charges assessed against a unit shall be the personal and individual debt of the owner or owners thereof and such owners shall be jointly and severally liable therefor.

21. Lien for Non-Payment of Common Expenses and Other Obligations.

All sums assessed but unpaid for the share of common expenses chargeable to any unit and all sums specially assessed hereunder to any unit, but unpaid, and any and all other sums due to the Association and unpaid by a unit owner under the terms of this Declaration, shall constitute a lien on such unit superior to all other liens and encumbrances, except only for:

(a) Tax and special assessment liens on the unit 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 encumbrances.

To evidence such lien, the Board or managing employee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the

name of the owner of the unit and a description of the unit. Such a notice shall be signed by one of the Board or by the managing employee and shall be recorded in the office of the Clerk and Recorder of Pitkin County, Colorado. Such lien shall attach from the date of the failure of payment. Such lien may be enforced by foreclosure of the defaulting owner's 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 proceedings, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association the 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 unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage and convey same, or otherwise deal therewith.

Any encumbrancer holding a lien on a unit may pay, but shall not be required to pay, any unpaid common expenses or other assessments or charges 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.

Upon written request of a mortgagee, the Association shall report to the mortgagee of a unit any unpaid assessments or other charges which could ripen into a lien remaining unpaid for longer than thirty days after the same are due; provided, however, that a mortgagee shall have first furnished to the managing employee or to the Board, notice of such encumbrance.

22. Liability for Common Expense and Other Charges Upon Transfer of a Unit is Joint. Upon payment of a reasonable fee not to exceed Twenty-Five Dollars and upon the written request of any owner or any mortgagee or prospective mortgagee of a unit, the Association, by its managing employee, or if there is none, then by the financial officer of the Association, shall issue

a written statement setting forth the amount of the unpaid special assessments and common expenses, and other charges due hereunder, if any, with respect to the subject unit, the amount of the current assessments and the date that such assessment becomes due, and credit for advanced payments of common assessments, 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 after receipt thereof, all unpaid common expenses and other charges due hereunder 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 and for the special assessments and other charges due hereunder 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 Twenty-Five Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the managing employee or the Association setting forth the amount of the unpaid assessments, and any other charges due hereunder, if any, with respect to the subject unit, the amount of the current assessment, the date that such assessment becomes due, and credits for advanced payments, which statement shall be conclusive upon the Association. Unless such request for such a statement shall be complied with within ten days after receipt of such request, then such requesting grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for any unpaid assessments or other charges due hereunder against the subject unit. The provisions contained in this paragraph shall not apply to the initial sales and conveyances of the units by Declarant, and such sales shall be free from any liens for common or special assessments to the date of conveyance thereof by Declarant.

23. Mortgaging a Condominium Unit - Priority. 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 unit may create junior mortgages on the following conditions: (1) 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, the Certification of Incorporation and the By-Laws of the Association; (2) 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 one or more of the members of the Board of Managers of the Association.

24. Sale or Leasing and Right of First Refusal and Option.

(a) Every unit owner, other than the Declarant, who intends or desires to sell his unit at any time on or before ten years after the date of the recording of this Declaration, shall enter into an Agreement with DALY CONSTRUCTION, INC. (hereinafter referred to as "Sales Manager") or with any broker licensed to act as such in Colorado selected by the Sales Manager, appointing the Sales Manager or such broker selected as aforesaid as the exclusive agent and broker for a period of six months for the sale of such unit at the price selected in good faith by the unit owner, such Agreement to be in the form attached hereto as Exhibit "B".

(b) If any owner of a unit, other than the Declarant, receives a bona fide offer for the sale of his unit, or a bona fide offer for a lease of his unit (or if the lessee of any unit receives a bona fide offer for a sub-lease of such unit or for the assignment of his lease), which he intends to

accept, he shall give notice to the Board of such offer and such intention, the name and address of such proposed purchaser, lessee, assignee or sublessee, the terms of the proposed transaction, and such other information as the Board may reasonably require. Said notice shall contain an executed copy of such offer. The giving of such notice shall constitute a warranty and representation by the giver thereof that he believes such offer, and all information contained in such notice, to be bona fide, true and correct in all respects. During the period of thirty (30) days following receipt by the Board of such written notice, the Board shall have the first right at its option to purchase or lease such unit on behalf of all other owners (or to cause the same to be purchased or leased by the designee or designees, corporate or otherwise, of the Board), on the same terms and conditions as stated in the aforesaid notice received by the Board. If the Board shall give written notice to the unit owner or lessor within said thirty (30) day period of its election to purchase or lease said unit (or to cause the same to be purchased or leased by its designee, as aforesaid), and a matching offer or deposit is paid to the managing agent or any bank selected by the Board as escrowee for the benefit of the seller or lessor, then such purchase or lease by the Board or its designee shall be closed upon the same terms as such proposed sale or lease.

If the Board shall give written notice to the seller or lessor within said thirty (30) day period that it has elected not to exercise such option, or if the Board shall fail to give notice within said thirty (30) day period that it does or does not elect to purchase or lease as herein provided, then the proposed sale or lease transaction as described and set forth in the notice to the Board may be contracted for within sixty (60) days after the expiration of said thirty (30) day period. If the seller or lessor fails to contract for such sale or lease within such sixty (60) day period, or if he shall so contract but such sale or lease shall not be consummated pursuant to such contract, then such unit and all rights with respect thereto shall again become subject to the Board's right of first refusal and option as herein

provided.

(c) In the event any unit or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale), the person acquiring title through such sale shall, before taking possession of the unit so sold, give thirty (30) days written notice to the Board of his intention so to do, whereupon the Board shall have an irrevocable option to purchase such unit or interest therein at the same price for which it was sold at said sale. If said option is not exercised by the Board within said thirty (30) days after receipt of such notice it shall thereupon expire and said purchaser may thereafter take possession of said unit. The Board shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser within said thirty (30) day period.

(d) If a proposed lease or sub-lease of any unit is made after compliance with the foregoing provisions, a copy of the lease as and when executed shall be furnished by the lessor to the Board, and the lessee thereunder shall be bound by and be subject to all of the obligations of the owner with respect to such unit as provided in this Declaration, and the lease shall expressly so provide. The owner making any such lease shall not be relieved thereby from any of his obligations. Upon the expiration or termination of such lease, or in the event of any attempted subleasing thereunder, the provisions hereof with respect to the Board's right of first refusal shall apply to such unit.

(e) The terms of this Paragraph 24 and the right of first refusal herein provided for shall not be applicable to:

(i) the transfer or conveyance, by operation of law or otherwise, of the interest of a co-owner of any unit to any other co-owner of the same unit, where such co-owners hold title to such unit as tenants in common or as joint tenants.

(ii) leases or sub-leases having a term of three calendar months or less, but any such lease or sub-lease shall not be

renewable or extended except by compliance with the terms hereof.

(iii) the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws.

(iv) the transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business; a transfer of all or part of a partner's or partners' interests between one or more partners.

(v) the transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution; a transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least fifty per cent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the unit.

(vi) the transfer by gift.

(vii) the execution of a bona fide trust deed, mortgage, or other security instruments.

Such persons, owners or grantees acquiring an interest shall be subject to all provisions of Paragraph 24 except as is provided herein.

(f) Where title to any unit is held by a corporation, or a partnership, the transfer of fifty per cent (50%) or more of the issued and outstanding shares of such corporation, or of fifty per cent (50%) or more of the interest in such partnership, shall be deemed a transfer of the unit owned by such corporation or partnership.

(g) In the event any owner other than the Declarant, or any lessee shall attempt to sell, lease or sub-lease his unit without complying with the terms of this Paragraph 24, such sale, lease or sub-lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser, lessee or tenant who shall be subject to eviction and removal,

Page 28. forcibly or otherwise, with or without process of law.

(h) The Board shall not exercise any option or right of first refusal hereinabove set forth to purchase any unit without the prior written consent of 66-2/3% of the owners. The Board or its duly authorized representatives may bid to purchase at any auction or sale of the unit or interest therein of any owner, deceased or living, which said sale is held pursuant to an order or direction of a court upon the prior written consent of 66-2/3% of the owners, which said consent shall set forth a maximum price which the Board is authorized to bid and pay for said unit or interest therein.

(i) Acquisitions or leasing of units or interests therein under the provisions of this Paragraph 24 shall be made from the funds of the Association. If said funds are insufficient, the Board shall levy a special assessment against each owner in the ratio that his percentage of ownership in the general common elements, as set forth in Exhibit "A", bears to the total of all such percentages applicable to units subject to said special assessment, which assessment shall become a lien and may be perfected and foreclosed in the manner provided in Paragraph 21 hereof with respect to liens for failure to pay a share of the common expenses. The Board, in its discretion, may borrow money to finance the acquisition of a unit or interest therein which said acquisition is authorized by this paragraph; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the property other than the unit or interest therein to be acquired.

(j) Units or interests therein acquired or leased by the Board pursuant to the terms of this Paragraph 24 shall be held of record in the name of the Association, for use and benefit of all the owners in the same proportions that the Board could levy a special assessment under the terms of sub-paragraph (i) hereof. Said units or interests therein shall be sold or leased by the Board for the benefit of the owners upon such price and terms as the Board shall determine. All proceeds of such sale and/or leasing shall be deposited in the maintenance fund and may thereafter be disbursed

at such time and in such manner as the Board shall determine.

(k) In the event of any default on the part of any owner under any first mortgage which entitles the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this Paragraph 24, and the purchaser (or grantee under such deed in lieu of foreclosure) of such unit shall be thereupon and thereafter subject to the provisions of this Declaration and the By-Laws of the Association. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the unit free and clear of the provisions of this Paragraph 24, but its grantee shall thereupon and thereafter be subject to all of the provisions hereof.

(l) Upon the written consent of all the members of the Board, any of the rights or options contained in this Paragraph 24 may be released or waived and the unit or interest therein which is subject to right of first refusal set forth in this paragraph may be sold, conveyed, or leased free and clear of the provisions of this paragraph.

(m) Upon the written request of any prospective transferor, purchaser, tenant or mortgagee of a unit, the managing employee or the Association, by its Secretary, shall issue a written and acknowledged certificate in recordable form, which certificate shall if so requested be contained on the face of any conveyance of such unit, evidencing that:

(i) with respect to a proposed sale or lease hereunder that the provisions of this Paragraph 24 have been complied with or duly waived by the Board and that the rights of first refusal of the Board have been terminated, if such is the fact;

(ii) that any conveyance, deed or lease is, by the terms hereof, not subject to the provisions of this Paragraph 24, if such is the fact;

and such a certificate shall be conclusive evidence of the facts contained therein. The provisions of this sub-paragraph shall not apply to any sale, conveyance or lease of a unit by the Declarant.

(n) The failure of or refusal by the Board to exercise the right herein provided for to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner or lessee receives any subsequent bona fide offer from a prospective purchaser or tenant.

(o) The right of first refusal, as provided herein, shall extend and run for the period of the lives of THOMAS J. DALY, JUDITH DALY and RICHARD M. NIXON, President of the United States, and their now living descendants, and the survivor of them, plus twenty-one years.

(p) Except as is otherwise provided in this Paragraph 24, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each and every conveyance by a grantor(s) of an apartment unit shall be, for all purposes, deemed to include and incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this Paragraph 24.

25. Association as Attorney-in-Fact, Damage, Destruction, Obsolescence and Sale. 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 unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead, for the purpose of dealing with the property upon its destruction or obsolescence as is hereinafter 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 an owner which are necessary and appropriate to exercise the powers herein granted. The term "improvements" means any improvements forming a part of the property, or any portion thereof, including any unit. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the same to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. 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) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than fifty per cent of the square foot area of the building, 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 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 (30) 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 unit may be enforced and collected as is provided in Paragraph 21. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For payment of taxes and special assessments liens in favor of any assessing entity and customary expenses of sale;
- (2) For payment of the balance of the lien of any first mortgage;
- (3) For payment of unpaid charges due hereunder and common expenses, including all sums due under the terms of this Paragraph 25;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (5) The balance remaining, if any, shall be paid to the unit owner.

(c) If more than fifty per cent of the square foot area of the building is destroyed or damaged, and if the owners representing an aggregate ownership interest of seventy-five per cent, or more, of the general common elements, do not voluntarily, within one hundred and eighty days (180) 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 owner's percentage interest in the general common elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the units. Each such account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the owner. 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 unit owner's percentage interest in the general common elements. 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 unit represented by such separate account. 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 sub-paragraph (b) (1) through (5) of this paragraph. The provisions contained in this sub-paragraph shall not hinder the protection given to a first mortgagee under a mortgage endorsement.

If the owners representing an aggregate ownership interest of seventy-five per cent, 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 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 unit and may be enforced and collected, as is provided in Paragraph 21. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in Paragraph (b) (1) through (5) of this paragraph.

(d) The owners representing an aggregate ownership interest of eighty-five per cent, or more, of the general common elements may agree that the units are obsolete and adopt a plan for the renewal and reconstruction, which plan must have 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 common expenses; provided, however, that an owner not a party to such plan for renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. The Association shall then have fifteen days within which to cancel such plan. If such plan is not cancelled then the unit shall be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within 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 nomination to the other party), an appraiser who shall be a member of the Denver Board of Realtors. 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 appraiser (to be selected from the Denver Board of Realtors). 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 appraiser (to be selected from the Denver Board of Realtors) 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 persons (each of whom shall be a member of the Denver Board of Realtors), and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Colorado, 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 ten days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty 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, then 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 fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in sub-paragraph (b)(1) through (5) of this paragraph.

(e) The owners representing an aggregate ownership interest of ninety per cent or more, of the general common elements may agree that the units are obsolete and that the property should be sold. Such 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 the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds

shall be paid into separate accounts, each such account representing one unit. Each such account shall be in the name of the Association, and shall be further identified by the 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 each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this paragraph.

26. Acquisition of Property for Common Use. The Association may acquire and hold for the use and benefit of all of the 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 owners in the same proportion as their respective interests in the general common elements and shall not be transferable except with a transfer of a unit. A transfer of a unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. The transfer of title to a unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed unit.

27. Registration by Owner of Mailing Address. Each owner shall register his mailing address with the Association, and except for budget 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 Managers of the Association or the Association shall be sent by certified mail, postage prepaid, to P. O. Box 1203, Aspen, Colorado, until such address is changed by a notice of address change duly recorded in

the office of the Clerk and Recorder, Pitkin County, Colorado.

28. Period of Condominium Ownership. The separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner and as is provided in Paragraph 29 of this Declaration or until terminated in the manner and as is provided in subparagraphs (c) and (e) of Paragraph 25 of this Declaration.

29. Revocation. This Declaration shall not be revoked unless all of the owners and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all of the condominium units unanimously consent and agree to such revocation by instrument(s) duly recorded.

30. Compliance with Provisions of Declaration, By-Laws of the Association. Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the rules and regulations of the Association, as the same may be lawfully amended from time to time.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board (in the name of the Association on behalf of the owners) the right, in addition to any other rights provided for in this Declaration: (a) to enter upon the unit, or any portion of the property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) to recover sums due for damages.

Furthermore, if any owner (either by his own conduct or by the

conduct of any other occupant of his unit) shall violate any of the covenants of this Declaration or the regulations adopted by the Board and such violation shall not be cured within thirty (30) days after notice in writing from the Board or shall re-occur more than once thereafter, then the Board shall have the power to issue to the defaulting unit owner a ten (10) day notice in writing to terminate the right of the said defaulting owner to continue as an owner and to continue to occupy, use or control his unit and thereupon an action in equity may be filed by the Board against the owner or occupants, or in the alternative a decree declaring the termination of the defaulting owner's right to occupy, use or control the unit owned by him on account of the breach of covenant and ordering that all the right, title and interest of the owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting owner from re-acquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting owner in said decree. Any balance of proceeds after satisfaction of such charges shall be applied and paid in the same order as is provided in sub-paragraph (b)(1) through (5) of Paragraph 25. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the unit and, subject to the Board's rights as provided in Paragraph 24(c) hereof, to immediate possession of the unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

tions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce same, no matter how many violations or breaches may occur.

32. Amendments. The provisions of Paragraph 24(a) hereof may not be amended, changed or modified. No change, modification or amendment (including, but not limited to, any change, modification or amendment to or in Paragraph 20(a) hereof) which affects the rights, privileges or obligations of the Declarant shall be effective without the prior written consent of the Declarant. Except as hereinabove provided, the provisions of Paragraphs 1, 2, 3, 4(a), 5, 6, 7, 8, 11, 12(a), 14(b), 14(c), 16, 17, 20, 21, 24 and this Paragraph 32 of this Declaration may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all of the owners and all mortgagees or holders of any deed of trust having bona fide liens of record against any units. Other provisions of this Declaration may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all of the members of the Board, at least 75% of the owners and by all mortgagees or holders of any deed of trust having bona fide liens of record against any units. Any amendment, change or modification shall conform to the provisions of the Colorado Condominium Ownership Act and shall be effective upon recordation thereof.

33. General.

(a) 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. All of the terms hereof are hereby declared to be severable.

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

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

(d) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium development.

(e) 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 provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only for the period of the lives of THOMAS J. DALY, JUDITH DALY and RICHARD M. NIXON, President of the United States, and their now living descendants, and the survivor of them, plus twenty-one years.

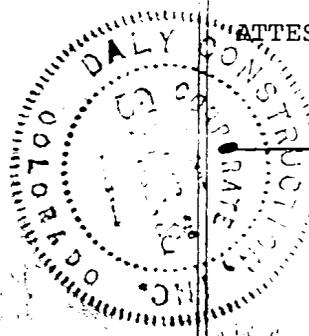
IN WITNESS WHEREOF, the Declarant has duly executed this Declaration this 17th day of March, 1970.

DALY CONSTRUCTION, INC.

By: Thomas J. Daly  
President

ATTEST:

Judith Daly  
Secretary



STATE OF COLORADO     )  
                                  ) SS.  
COUNTY OF PITKIN     )

BOOK **247** PAGE **407**

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day  
of March, 1970, by THOMAS J. DALY, President, and JUDITH DALY,  
Secretary, of DALY CONSTRUCTION, INC., a Colorado corporation.

WITNESS my hand and official seal.

*Peggy E. Muhl*  
Notary Public

My commission expires:

Dec - 26 - 1972



EXHIBIT "A"

BOOK 247 PAGE 408

TO

CONDOMINIUM DECLARATION

FOR

700 MONARCH CONDOMINIUM

UNIT NUMBER

APPURTENANT UNDIVIDED INTEREST (PERCENTAGE)

101	5.26%
102	5.03%
103	4.46%
104	4.46%
105	5.03%
106	5.26%
107	2.86%
108	2.86%
201	5.60%
202	5.38%
203	6.64%
204	6.64%
205	5.38%
206	5.60%
207	3.10%
208	3.10%
301	5.95%
302	5.72%
305	5.72%
306	5.95%
	<hr/>
	100.00%

EXHIBIT "B"

To 700 MONARCH CONDOMINIUM CONTRACT

BOOK 247 PAGE 409

This is an EXCLUSIVE LISTING and Right to Sell

Aspen, Colorado . . . . ., 19. . .

In consideration of the services of the hereinafter named real estate broker and subject to the conditions stated on the reverse side hereof which are incorporated into this agreement by reference, I hereby list with said broker, for a period of 180 days from date hereof, the property described below, and I hereby grant said broker the exclusive and irrevocable right to sell the same within said time at the price and on the terms herein stated, or at such other price and terms which may be accepted by me, and to accept deposits thereon and retain same until the closing of, or defeat of, the transaction. I hereby agree to pay said broker . . . . 6 . . . . % of the selling price for his services (1) in case of any sale or exchange of same within that time, either by the undersigned owner, the said broker, or by any person, or (2) in case of any such sale or exchange of same within the 90 days subsequent to the expiration of this agreement to any party with whom the said broker negotiated and whose name was disclosed to the owner by the broker during the listing period.

700 Monarch Street

LEGAL DESCRIPTION. Unit No. . . . ., 700 Monarch Condominium together with a (percent) interest in and to the general common elements and limited common elements appurtenant to such Unit as set forth in the Condominium Declaration and Map for the 700 Monarch Condominium.

Price \$. . . . . Terms. . . . .

PRICE TO INCLUDE: Wall-to-wall carpeting, Refrigerator, Dishwasher, Disposal, Range and oven with hood, Fireplace and all window and door Draperies.

Subject to the following encumbrances, easements, leases and tenancies:

In case of sale or exchange I agree to furnish, at my option and expense, an abstract of title, certified to date, or a title insurance policy, as evidenced by a title commitment in an amount equal to the purchase price, showing merchantable title in the owner and to convey by . . . . . free and clear of all taxes, liens, encumbrances, easements, leases, and tenancies except as above mentioned.

General taxes and . . . . . assessments, if any, for 19. . . (based on the 19. . . levy and the 19. . . assessment), rents, water rents, fire and extended coverage insurance premiums and interest on encumbrances, if any, shall be apportioned to date of delivery of deed.

Taxes for all special improvements now installed, whether assessed or not, shall be paid by . . . . .

Occupancy of said real estate shall be given to the purchaser on or before . . . . .

This agreement executed in duplicate and receipt of a copy is hereby acknowledged.

Accepted . . . . . Broker . . . . . Owner . . . . .

By . . . . . Owner . . . . .

Phone . . . . . Address . . . . .

Phone . . . . .