

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE NINETEENTH FAIRWAY TOWNHOUSE CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Warner Properties, Inc., a Colorado corporation, hereinafter referred to as the "Declarant," is the owner of the real property situate in the County of Eagle, State of Colorado which is described on Exhibit 1 attached hereto and incorporated herein, hereinafter referred to as the "Property;" and,

WHEREAS, Declarant desires to establish a condominium project under the Condominium Ownership Act of the State of Colorado, to-wit: Colo. Rev. Stat. Ann. § 38-33-101, et. seq. (1973, as amended); and

WHEREAS, Declarant has or shall have constructed a building on the Property, which building shall consist of a total of eight separately designated condominium units; and

WHEREAS, Declarant intends to enlarge this condominium project by submitting to it additional lands with an additional building(s) containing additional Units, as hereinafter defined; and

WHEREAS, Declarant does hereby establish a plan for the separate fee simple ownership of real property estates consisting of the condominium apartments in the building improvements and the co-ownership by the individual and the separate owners thereof, as tenants in common, of all of the remaining property, which is herein defined and referred to as the General Common Elements.

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 and 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 which is or becomes subject to this Declaration and improvements thereon, their grantees, successors, heirs, executors, administrators, devisees, or assigns.

1. Definitions. As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

(a) "Condominium Apartment" means an individual air space which is contained in an enclosed room or rooms occupying all or part of a floor or floors in a Building. Each Condominium Apartment is shown on the Map and is identified thereon with a number. The exact boundaries of a Condominium Apartment are the interior unfinished surfaces of such walls, floors and ceilings

which mark the perimeter boundaries thereof and where found along such walls, floors and ceilings, the interior surfaces of built-in fireplaces and windows and doors in their closed position, and the Condominium Apartment includes both the portions of the Building so described and the air space so encompassed. Any General Common Elements, as hereafter defined, which may be within a Condominium Apartment shall not be part of the Condominium Apartment.

(b) "Owner" means the Person or Persons owning a Condominium Apartment in fee simple absolute and an undivided interest in fee simple in the General Common Elements in the percentage specified and established in this Declaration, including the Declarant so long as any Unit remains unsold.

(c) "General Common Elements" means all of the Project, except the portions thereof which constitute Condominium Apartments, and also means all parts of a Building or any facilities and fixtures which may be within a Condominium Apartment which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of a Building or any part thereof or any other Condominium Apartment therein.

Without limiting the generality of the foregoing, the following shall constitute General Common Elements:

(i) all of the land and easements which are part of the Property and all swimming pools and related facilities, if any, which may be located on the Property;

(ii) all foundations, columns, girders, beams and supports of a Building;

(iii) all deck areas, porches, garages, car ports and parking spaces (subject to specific assignment for individual Owner use as Limited Common Elements, as hereinafter provided);

(iv) the exterior walls of a Building, the main or bearing walls within a Building, the main or bearing subflooring and the roofs of a Building;

(v) all entrances, exits, halls, corridors, lobbies, lounges, linen rooms, laundry rooms, saunas, whirlpools, storage space, recreational facilities, elevators, stairs, stairways and fire escapes, if any, not within any Condominium Apartment;

(vi) all utility, service and maintenance rooms, space, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, refrigeration, air conditioning, incineration, or similar utility, service or maintenance purposes, including furnaces, tanks, pumps, motors, fans, compressors, vents, ducts, flues, wires, pipes, conduits and other similar fixtures, apparatus, installations and facilities;

(vii) all rooms or premises for the lodging or housing of managers, custodians or persons in charge of or employed to handle, supervise, operate and maintain the Project, if any; and

(viii) all other parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

(d) "Association" means The Nineteenth Fairway Townhouse Condominiums Association, Inc., a Colorado corporation, not for profit, its successors and assigns, the Articles of Incorporation and By-Laws of which, along with this Declaration, shall govern the administration of the Project; the members of which shall be all of the Owners of the Units in the Project.

(e) "Building" means the building or group of buildings erected or to be erected within the Project.

(f) "Common Expenses" means and includes:

(i) all sums lawfully assessed against the Owners by the Association;

(ii) expenses of administration, maintenance, repair or replacement of the General Common Elements;

(iii) expenses declared Common Expenses by provisions of this Declaration and the By-Laws; and

(iv) expenses agreed upon as Common Expenses by a majority vote of the Owners, representing an aggregate ownership interest of fifty-one percent, or more, of the General Common Elements.

(g) "Limited Common Elements" means those General Common Elements which are reserved for the use of certain Owners to the exclusion of the others.

(h) "Person" means individual, corporation, partnership, combination, association, trustee or other legal entity.

(i) "Mortgage" means and includes any mortgage, deed of trust or other assignment or security instrument creating a lien on any Unit, and "Mortgagee" shall include any grantee, beneficiary or assignee of a Mortgage.

(j) "Unit" means the fee simple interest and title in and to a Condominium Apartment, together with the undivided interest in the General Common Elements appurtenant to such Condominium Apartment and all other rights and burdens created by this Declaration.

(k) "Project" means all of the Property, Buildings and improvements initially submitted to this Declaration.

(l) "Board of Directors" or "Board" means the governing body of the Association.

(m) "Managing Agent" means the Person employed by the Board to perform the management, operational and rental functions of the Project.

(n) "By-Laws" means the by-laws of the Association.

(o) "Articles" means the articles of incorporation of the Association.

(p) "Guest" means any agent, employee, tenant, guest, licensee or invitee of an Owner.

(q) "Declaration" means this instrument together with all amendments or supplements hereto hereafter recorded in the records of Eagle County, Colorado.

(r) "Condominium Project" means the Project and all land and improvements subsequently submitted to this Declaration as is hereinafter provided.

2. Map. There shall be filed for record in Eagle County, Colorado, a map, hereinafter referred to as the "Map," which Map may be filed in whole or in part and if filed in part shall be supplemented as determinable, depicting thereon:

(a) The legal description of the surface of land described on Exhibit 1 attached hereto;

(b) The linear measurements and location, with reference to the exterior boundaries of said land, of the Buildings and all improvements built on said land by Declarant;

(c) Floor plans and elevation plans of the Buildings on said land, showing the location, the designation and the linear dimensions of each Condominium Apartment, and the designation of all of the Limited Common Elements;

(d) The elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plan, and the linear measurements showing the thickness of the perimeter and common walls of the Buildings.

The Map, and any supplement(s) thereto, shall contain a statement of an architect or engineer certifying that the Map fully and accurately depicts the layout, measurements and location of all of the improvements, the Condominium Apartment designations, the dimensions of such Condominium Apartments and the elevations of the floors and ceilings. Declarant reserves the right to amend the Map and supplement(s) thereto, from time to time, to conform the Map to the actual location of any of the constructed improvements and to establish, vacate and relocate outside the Buildings, utility easements, access road easements and carports, garages or parking spaces, and to establish certain General Common Elements as Limited Common Elements.

3. Declaration. Declarant for itself, its successors and assigns, hereby declares that the Project shall at all times be owned and held in condominium ownership under the Condominium Ownership Act of the State of Colorado, and shall be owned, held, used, transferred and occupied subject to the provisions of this Declaration.

4. Division Into Units. The Project is hereby divided into Units, each consisting of a separate fee simple estate in a particular Condominium Apartment, and an appurtenant undivided fee simple interest in the General Common Elements. The undivided interest in the General Common Elements appurtenant to a particular Condominium Apartment is as is set forth on Exhibit 2 attached hereto and incorporated herein, such undivided interests being determined on the basis of the square footage

contained in each particular Condominium Apartment in relation to the total square footage of all the Condominium Apartments contained in the Project. Each Owner shall own his own appurtenant undivided interest in the General Common Elements, as a tenant in common with all other Owners.

5. Limited Common Elements. A portion of the General Common Elements is reserved for the exclusive use of the Owners of certain of the Units and such areas are referred to as Limited Common Elements. The Limited Common Elements reserved for the exclusive use of the Owners of the respective Units are identified and shown on the Map, subject to any supplement(s) thereto, and such General Common Elements shall be used by the Owner of such Unit to the exclusion of the use thereof by the other Owners of Units except by invitation.

6. Inseparability of a Unit. An Owner's undivided interest in the General Common Elements shall not be separated from the Condominium Apartment to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Condominium Apartment even though the interest is not expressly mentioned or described in a deed or other instrument.

7. Description of Unit. Every contract for the sale of a Unit written prior to the substantial completion of the Unit and prior to the filing for record of the Map may legally describe a Unit by its identifying Unit number and Building designation followed by the words "The Nineteenth Fairway Townhouse Condominiums," with further reference to the Map thereof to be filed for record and the Declaration to be recorded.

Every deed, lease, mortgage, will or other instrument shall legally describe a Unit by its identifying Unit number and Building designation followed by the words "The Nineteenth Fairway Townhouse Condominiums," according to the Map thereof filed for record and subject to the Declaration of Covenants, Conditions and Restrictions of The Nineteenth Fairway Townhouse Condominiums, recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, Eagle County, Colorado records. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Apartment, 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 throughout and for use of the General Common Elements; the right to the appropriate exclusive use of the Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

8. No Partition. The General Common Elements shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the General Common Elements. Similarly, no action shall be brought for partition of a Condominium Apartment or a Unit between or among the Owners thereof. Each Owner expressly waives any and all such rights of partition he may have by virtue of his ownership of a Unit.

9. Separate Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building, the Property nor any use of the General Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

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. Certain Work Prohibited. No Owner shall undertake any work which would jeopardize the soundness or safety of the Project, reduce the value or impair an easement or hereditament without the unanimous vote of all the other Owners. Structural alterations shall not be made by an Owner to the Building or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from the Building without the prior written consent of the Board of Directors.

12. Liens Against Condominium Apartments -- Removal From Lien -- Effect of Part Payment.

(a) Subsequent to the substantial completion of the Project, no lien shall arise or be effective against the Project. After such substantial completion, liens or encumbrances shall only arise or be created against each Condominium Apartment and the percentage of undivided interest in the General Common Elements appurtenant to the Condominium Apartment, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel of real property subject to individual ownership, provided, however, that no labor performed or materials furnished, with the consent or at the request of an Owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to law against the Unit or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Unit in the case of emergency repairs. Labor performed or materials furnished for the General Common Elements, if duly authorized by the Association, the Managing Agent, or the Board of Directors in accordance with the Declaration or By-Laws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each of the Units.

(b) In the event a lien is effected against two or more Units, the Owners of the separate Units may remove their Condominium Apartment and the percentage of undivided interest in the General Common Elements appurtenant to said Condominium Apartment from the lien by payment of the fractional or proportional amount attributable to each of the Units affected.

Individual payment shall be computed by reference to the percentages appearing in this Declaration. Subsequent to payment, discharge or other satisfaction, the Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Unit not so released or discharged.

(c) Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from the claim of any lien against the Unit of the Owner, or any part thereof, for labor performed or for materials furnished in work on such 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 and all costs incidental thereto, including reasonable attorney's fees. If not promptly paid, the Association may proceed to collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

13. Use and Possession. Each Owner shall be entitled to the exclusive ownership and possession of his Condominium Apartment. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. Each Condominium Apartment shall be used and occupied solely for the purpose of lodging or as a dwelling by the Owner, his family or by the Owners' Guests. Each Condominium Apartment shall be used only as a single residential dwelling and shall not be divided, physically or otherwise, so as to allow for use as a multi-family dwelling.

14. Various Rights and Easements.

(a) Owner's Rights in Limited Common Elements. Subject to the other provisions of this Declaration, each Owner, his family and such Owner's Guests, shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or in the Map as appurtenant to the Unit owned by such Owner.

(b) Association Rights: The Association shall have a non-exclusive right and easement to make such use of and to enter into or upon the General Common Elements, the Limited Common Elements and the Condominium Apartments as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(c) Owner's Easement for Access, Support and Utilities: Each Owner shall have a non-exclusive easement for access between his Condominium Apartment and roads and streets adjacent to the Project and the roads and streets in the Project, over the halls, corridors, stairs, elevators, walks, bridges and exterior access and other easements which are part of the General Common Elements. Each Owner shall have a non-exclusive easement in and over the General Common Elements, including the General Common Elements within the Condominium Apartment of another Owner, for horizontal and lateral support of the

Condominium Apartment which is part of his Unit, and for utility service to that Condominium Apartment, including water, sewer, gas, electricity, telephone and television service.

(d) Easements for Encroachments: If any part of the General Common Elements encroaches or shall hereafter encroach upon a Condominium Apartment, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Condominium Apartment encroaches or shall hereafter encroach upon the General Common Elements, or upon another Condominium Apartment, the Owner of that Condominium Apartment shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on a Condominium Apartment. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Map, 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.

(e) Easements in Condominium Apartments for Repair, Maintenance and Emergencies: Some of the General Common Elements are or may be located within a Condominium Apartment or may be conveniently accessible only through a particular Condominium Apartment. The Association, Managing Agent, and each Owner shall have an easement, which may be exercised for any Owner by the Association or the Managing Agent, as his agent, for access through each Condominium Apartment and to all General Common Elements, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Condominium Apartment. Damage to the interior or any part of a Condominium Apartment resulting from the maintenance, repair, emergency repair, or replacement of any of the General Common Elements, or as a result of emergency repairs within another Condominium Apartment, at the instance of the Association, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs and expenses of repairing such damage.

(f) Water Meter Easement: The water meter for the Project is situate in the Condominium Apartment which comprises part of Unit 4, and said Condominium Apartment shall at all times be owned, held, used, transferred and occupied subject to an easement for access through said Condominium Apartment by the Association, Managing Agent or water company employee, as may be necessary for the reading, repair and/or replacement of said water meter.

(g) Easements Deemed Appurtenant: The easements and rights herein created for an Owner shall be appurtenant to the Unit of that Owner and all conveyances of and other



instruments affecting title to a Unit shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

15. Owners' Maintenance Responsibility. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Condominium Apartment and the Condominium Apartment's doors and windows. The Owner shall not be deemed to own lines, pipes, wires, conduits, or systems (which for brevity are hereafter referred to as "utilities") running through his Condominium Apartment which serve one or more other Condominium Apartments, except as a tenant in common with the other Owners. Such right to maintain, repair, alter and remodel shall carry the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. An Owner shall maintain, clean and keep in repair the interior of his own Condominium Apartment, including the fixtures, doors and windows thereof and the improvements affixed thereto, and such other items and areas as may be required in the By-Laws. Also, an Owner shall maintain, clean and keep up in a neat and clean condition the deck and/or patio area adjoining and/or leading to a Condominium Apartment, if any, which areas are shown on the Map as Limited Common Elements appurtenant to such Owner's Condominium Apartment. All fixtures and equipment installed within the Condominium Apartment commencing at a point where the utilities enter the Condominium Apartment shall be maintained and kept in repair by the Owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Association may fulfill the same and charge such Owner therefor. Any expense incurred by an Owner under this paragraph shall be the sole expense of said Owner.

16. Compliance With Provisions of Declaration, Articles and By-Laws of the Association. Each Owner shall comply strictly with all of the provisions of this Declaration and the Articles and By-Laws of the Association, and the decisions, rules and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

17. Certain Rights and Obligations of the Association.

(a) Association as Attorney-in-Fact for Owners:  
The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the General Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Project upon its destruction or obsolescence as hereinafter provided and to grant utility

The acceptance by any Person of any interest in any Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Condominium Project and to perform all of the duties required of it. Notwithstanding the above, unless at least seventy-five percent (75%) of the First Mortgagees of Units (based upon one vote for each First Mortgage owned or held) have given their prior written approval, the Association shall not be empowered or entitled to:

(i) By act or omission, seek to abandon or terminate the Condominium Project;

(ii) Partition or subdivide any Condominium Apartment;

(iii) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the General or Limited Common Elements; or

(iv) Use hazard insurance proceeds for loss to the improvements for other than repair, replacement or reconstruction of such improvements.

(b) General Common Elements: The Association shall provide for the care, operation, management, maintenance, repair and replacement of the General Common Elements, except as is provided for in Paragraph 15. Without limiting the generality of the foregoing, said obligations shall include the keeping of such General Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such General Common Elements which might impair access to the Project or the Condominium Apartments; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the General Common Elements.

(c) Other Association Functions: The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners of Units on a self-supporting, special assessment or common assessment basis. Such activities, functions or services may include the providing of police or similar security services, the providing of garbage and trash collection services, the providing of firewood, the providing of maid and cleaning service for individual Condominium Apartments and the providing of check-in, mail and telephone answering service.

(d) Labor and Services: The Association may obtain and pay for the services of a Managing Agent 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 with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services.

(e) Property of Association: The Association may pay for, acquire and hold real and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each Owner's family and Guests may use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interest in the General Common Elements.

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 property associated with the foreclosed Unit.

(f) Association Right to Lease and License General Common Elements: The Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-owners, on either a short-term basis or long-term basis and with or without charge as the Association may deem desirable, any portion of the General Common Elements or any Unit owned by the Association (which Unit may be purchased from the Declarant). The rights granted to the Association in this subparagraph shall only be used in the promotion of the collective best interests of the Owners.

(g) Rules and Regulations: The Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of Condominium Apartments and of General Common Elements. Such rules and regulations may, without limitation: (i) regulate use of General Common Elements to assure equitable use and enjoyment by all Persons entitled thereto; (ii) require that draperies, shades or other window coverings shall present a uniform and attractive appearance from the exterior of the Building; and (iii) restrict or limit an Owner's rights to use portions of the General Common Elements used as lodging for any person employed by the Association or which may be licensed or leased by the Association for a particular use, purpose or event.

(h) The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

(i) Certificate: The Board of Directors shall, from time to time, record a certificate of identity and the mailing addresses of the persons then comprising the Board of Directors, together with the identity and address of the Managing Agent, if any there be. Such certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of the time elapsed since the date thereof.

(j) Implied Rights: The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

#### 18. The Association:

(a) General Purposes and Powers: The Association shall perform functions and hold and manage property as provided in this Declaration and so as to further the interests of Owners of Units in the Condominium Project. It shall have all powers necessary or desirable to effectuate such purposes.

(b) Membership: The Owner of a Unit shall automatically become a member of the Association. Said membership is appurtenant to the Unit of said Owner and title to the ownership of the membership for that Unit shall automatically pass with fee simple title to the Unit. Each Owner of a Unit shall automatically be entitled to the benefits and subject to the burdens relating to the regular membership for his Unit. If the fee simple title to a Unit is held by more than one Person, each co-tenant of a Unit shall be a member of the Association. Memberships in the Association shall be limited to Owners of Units in the Condominium Project.

(c) Board of Directors: The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an Executive Committee, or to a director or Managing Agent for the Association. Members of the Board of Directors shall be elected annually by Owners. There shall be not less than three nor more than ten members of the Board of Directors, the specific number to be set forth from time to time in the By-Laws, all of whom shall be Owners elected by Owners. Regardless of the number of members of the Board of Directors, the terms of at least one-third of such Board shall expire annually.

Notwithstanding anything to the contrary provided herein, however, until the first annual meeting of the members of the Association, the members of the Board of Directors shall be appointed by Declarant and need not be Owners of Units.

(d) Voting of Owners: Each Owner shall have one vote. Voting by proxy shall be permitted.

(e) Notice: Except as a greater period is specified in this Declaration or in the By-Laws, each Owner shall be entitled to at least 10 days notice of any meeting at which such Owner has the right to vote. Notices of meetings shall be in writing and shall state the date, time and place of the meeting and shall indicate each matter to be voted on at the meeting which is known to the Association at the time notice of the meeting is given. Any notice shall be deemed given and any budget or other information or material shall be deemed furnished or delivered to a party, at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event when such party actually receives such notice, information or material. Any notice, information or material shall be deemed properly addressed to an Owner if it is addressed to the name and address shown on the most recent written notice of name and address, if any, furnished to the Association by such Owner, or, if a name and address is not so furnished, if it is addressed "To the Owner" at the address of the Unit of such Owner.

(f) By-Laws and Articles: The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified by provisions of the Articles and By-Laws of the Association, but no such provisions shall be, at any time, inconsistent with any provision of this Declaration.

19. Assessment for Common Expenses. All Owners shall be obligated to pay the estimated assessments imposed by the Board of Directors of the Association to meet the Common Expenses. The assessments shall be made pro rata according to each Owner's percentage of interest in and to the General Common Elements. Except as hereinbefore provided, the Limited Common Elements shall be maintained as General Common Elements and Owners having exclusive use thereof shall not be subject to any special charges or assessments. Assessments for the estimated Common Expenses, including insurance, shall be due monthly, in advance, on the first day of each month. The Managing Agent or Board of Directors shall prepare and deliver or mail to each Owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments are made. Contributions for monthly assessments shall be prorated if the ownership of a Unit commences on a day other than the first day of a month. The assessments made for Common Expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent or Board of Directors of the Association shall from time to time determine is to be paid by all of the Owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements, which sum may include, among other things: expenses of management; taxes and special assessments, until separately assessed; premiums for insurance of the types and kinds provided for in Section 22 hereafter; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash collections; wages, water charges, legal and accounting fees; management fees; capital expenditures made by the Board not exceeding \$1,000.00 per year; expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration; deficit remaining from a previous period; and other costs and expenses relating to the General Common Elements. Further, it shall be mandatory for the Managing Agent or Board to establish, out of such monthly assessments, a contingency or reserve fund for the repair, replacement and maintenance of those General Common Elements that must be replaced periodically. The omission or failure of the Managing Agent or the Board of Directors to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. Any Owner or Mortgagee may, pursuant to Colo. Rev. Stat. Ann. § 38-33-107 (1973, as amended) inspect the Association's records of receipts and expenditures at convenient weekday business hours, and, upon ten days' notice to the Board of Directors or Managing Agent, if any, and upon payment of a reasonable fee, not to exceed \$20.00, any Owner or First Mortgagee shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. At the end of any calendar year the Board of Directors or the Managing Agent may, but shall not be required to, refund to each Owner his proportionate share of funds then held by the Association which are not deemed to be necessary to meet the Common Expenses.

20. Assessment Reserves. The Association may require an Owner, other than Declarant, to deposit with the Association up to an amount equal to three times the amount of the estimated monthly common assessment, which sum shall be held, without interest, by the Association or Managing Agent as a reserve to be used for paying such Owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment of the monthly common assessment as the same comes due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his assignee or sublessee for any unused portion thereof.

\* - 21. Special Assessments for Capital Improvements. In addition to the monthly assessments authorized above, the Association may levy at any time a special assessment, payable over such a period as the Association may determine, for the purpose of deferring, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof or for any other expense or purchase incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the General Common Elements. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners and no payment shall be due less than thirty days after such notice shall have been given.

22. Insurance.

(a) The Board of Directors or the Managing Agent shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates, established by the Colorado Insurance Commissioner, and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of AAA or better, covering the risks set forth below. The Board of Directors or Managing Agent shall not obtain any policy where: (i) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; or (ii) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the company's Board of Directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds. The types of coverages to be obtained and risks to be covered are as follows, to-wit:

(1) Fire insurance with extended coverage and all risk endorsements, which endorsements shall include endorsements for vandalism, malicious mischief, boiler explosion and machinery with a minimum endorsed amount of \$50,000.00 per accident per location. Said casualty insurance shall insure the entire Condominium Project and any property, the nature of which is a General Common Element (including all of the Condominium Apartments, fixtures therein initially installed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by Unit Owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee of a Unit, which shall provide that the loss, if any, thereunder, shall be payable to the Nineteenth Fairway Townhouse Condominiums Association, Inc. for the use and benefit of mortgagees as their interest may appear.

(2) If the Condominium Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Condominium Project in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid principal balances of the mortgages on the Units comprising the Condominium Project.

(3) Public liability and property damage insurance in such limits as the Board or Managing Agent may from time to time determine, but not in an amount less than \$500,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Condominium Project. Said policy shall also contain a "severability of interest endorsement."

(4) Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(5) The Association shall purchase, in an amount not less than one hundred percent (100%) of the Association's estimated annual operating expenses and reserves, fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

(6) The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Condominium Project, including plate or other glass insurance and any personal property of the Association located thereon.

(b) All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least twenty (20) days prior written notice to all of the insureds, including First Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Unit Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Unit number designation) and First Mortgagee.

(c) Prior to obtaining any policy of fire insurance or renewal thereof, the Board or Managing Agent shall obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the entire Condominium Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than ninety percent (90%) of the full replacement cost. Determination of maximum replacement value shall be made annually by one or more written appraisals to be furnished by a person knowledgeable of replacement cost, and each First Mortgagee shall be furnished with a copy thereof, within thirty (30) days after receipt of such written appraisals. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

(d) Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

\* (e) Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of person or other personal property belonging to an Owner and public liability coverage within each Condominium Apartment shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association and/or the Managing Agent shall have no responsibility therefor.

(f) In the event that there shall be any damage or destruction to, or loss to a Condominium Apartment which exceeds \$1,000.00 or any damage or destruction to, or loss to the General Common Elements which exceeds \$10,000.00, then notice of such damage or loss shall be given by the Association to each First Mortgagee of said Unit within ten (10) days after the occurrence of such event.

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

23. Lien for Non-Payment of Common Expenses. All sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Unit shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances, excepting only:

(a) Tax and special assessment liens on the Unit in favor of any assessing unit, and

(b) All sums unpaid on a First Mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance.

If any assessment shall remain unpaid after 10 days after the due date thereof, the Board of Directors or Managing Agent may impose a penalty on such defaulting Owner in an amount equal to 1.5% of such assessment. Likewise, a penalty equal to 1.5% of the unpaid assessment may be imposed on the first day of each calendar month thereafter so long as such assessment shall be unpaid.

To evidence such lien the Board of Directors or Managing Agent 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 of Directors or by the



Managing Agent and may be recorded in the office of the County Clerk of Eagle County, Colorado. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association in like manner as a mortgage on real property, upon the recording of a notice or claim thereof. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. In addition to all other costs, charges and expenses required to be paid by an Owner, an Owner shall pay to the Association the sum of \$100.00 if it was necessary for the Association to record a notice of its lien for Common Expenses. The Owner shall also be required to pay to the Association the monthly assessment for the Unit during the period of foreclosure, and the Association shall be entitled to the appointment of a Receiver to collect the same. The Managing Agent or Board of Directors shall have the power to bid on the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Common Expenses 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.

The Association shall report to the Mortgagee of a Unit any unpaid assessments remaining unpaid for longer than thirty days after the same are due as well as any other default of an Owner which is not cured within thirty days.

24. Owners' Obligations for Payment of Assessments.  
The amount of the Common Expenses assessed against each Unit shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses, and costs of suit and attorney's fees, shall be maintainable without foreclosing or waiving the lien securing same. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General Common Elements or by abandonment of his Unit.

25. Liability for Common Expenses Upon Transfer of Unit is Joint. Upon payment of a reasonable fee not to exceed Twenty Dollars and upon ten days' notice from any Owner or any Mortgagee or prospective Mortgagee of a Unit, the Association, by its Managing Agent or Board of Directors, shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date that such assessment becomes due and any credit for advanced payments for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all Persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Unit, except a First Mortgagee who acquires a Unit by a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the grant or conveyance,

without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee not to exceed Twenty Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Directors setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment, the date that such assessment becomes due and any credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. Unless such request for such a statement shall be complied with within ten days 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 against the subject Unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the Units by Declarant.

26. Mortgaging a Unit -- Priority. Any Owner shall have the right from time to time to Mortgage or encumber his Unit 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, and the By-Laws of the Association; and (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 the Managing Agent or one or more of the Board of Directors of the Association, and if not furnished, may be executed by the Association as attorney-in-fact for such junior Mortgagee.

27. Use and Other Restrictions.

(a) Restriction on Use: Each Condominium Apartment shall be used for residential purposes only, and no Condominium Apartment shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. No Condominium Apartment shall be used at any time for any business or commercial activity, except as follows: (i) the Owner thereof may lease or rent such Condominium Apartment for private residential, living or sleeping purposes; (ii) Declarant or its nominee may use any Condominium Apartment(s) as a model or sales unit until all Units owned by Declarant are sold; and (iii) the Association shall have the right but not the obligation to purchase and own any Condominium Apartment for the purpose of maintaining an office for the Association for storage, recreation, or conference area or any other use which the Association determines is consistent with the operation of the Project and the Association may also maintain offices, storage areas, conference areas and recreation areas elsewhere within the General Common Elements.

(b) General Common Elements Restrictions: All use and occupancy of General Common Elements shall be subject to and governed by the rules and regulations of the Association. No Owner and no Owner's Guests shall obstruct, damage, or commit waste to any of the General Common Elements. No Owner and no Owner's Guests shall change, alter, repair or store anything in or on any of the General Common Elements without

the prior written consent of the Association. Each Owner may use the General Common Elements, in accordance with the purpose for which they were intended, without hindering or encroaching upon the lawful rights of the other Owners.

(c) No Imperiling of Insurance: No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on the Project which might result in an increase in the insurance premiums of insurance obtained for the Project or which might cause cancellation of such insurance without the prior written consent of the Association.

(d) No Violation of Law: No Owner and no Owner's Guests shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(e) No Noxious, Offensive, Hazardous or Annoying Activities: No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on or in any part of the Project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or conducted on any part of the Project which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of the Project which is unreasonably bright or causes unreasonable glare.

(f) No Unsightliness: No unsightliness shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in any of the General Common Elements; nothing shall be hung or placed upon any of the General Common Elements, including areas which are Limited Common Elements; and nothing shall be placed on or in windows or doors of Condominium Apartments which would or might create an unsightly appearance.

(g) Restriction on Animals: No animals, livestock, reptiles or birds shall be kept on any part of the Project, except that domesticated dogs, cats or birds may be kept on the Project subject to all Eagle County, Colorado animal ordinances and subject to rules and regulations promulgated by the Association in regards thereto, provided that they are not kept for any commercial purposes. An Owner is responsible for any damage caused by his animal(s). No animals shall be allowed to remain tied or chained to any balconies, patios or other parts of a Condominium Apartment, and any such animal(s) may be removed by the Association or its agents.

(h) Restriction on Signs: No signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Association. The Association shall permit the placing of at least one sign of reasonable size and dignified form to identify the Project and the Units therein.

(i) Maintenance of Condominium Apartments: Each Condominium Apartment and all improvements, fixtures, furniture and equipment therein shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and in good repair.

(j) No Violation of Rules: No Owner and no Owner's Guests shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Condominium Apartments, the use of General Common Elements, or otherwise.

(k) Owner Caused Damage: If, due to the act or neglect of an Owner or such Owner's Guests or children, loss or damage shall be caused to any Person or property, including the Project or any Condominium Apartment therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as a special assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Unit of such Owner as provided hereinabove for assessments or other charges.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 27 shall be made by the Board of Directors of the Association and shall be final.

28. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project upon its destruction, repair 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, in their names, place and stead for the purpose of dealing with the Project 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 is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each Condominium Apartment and the General Common Elements 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.

Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

(a) In the event of damage or destruction to not more than sixty six and two-third percent of the total replacement cost of the Project, not including land, due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s).

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-six and two-thirds percent of the total replacement cost of the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Units. Such deficiency assessment shall be a Common Expense and made pro rata according to each Owner's percentage interest in the General Common Elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such 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 hereinbefore. 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, as attorney-in-fact. 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:

- (i) for payment of the balance of the lien of any First Mortgage;
- (ii) for payment of taxes and special assessment liens in favor of any assessing entity;
- (iii) for payment of unpaid Common Expenses;
- (iv) for payment of junior Mortgages and encumbrances in the order of and to the extent of their priority; and,
- (v) the balance remaining, if any, shall be paid to the Unit Owner.

(c) If more than sixty-six and two-thirds percent of the total replacement cost of the Project, not including land, is destroyed or damaged, and if the Owners representing an aggregate ownership interest of seventy-five percent, or more, of the General Common Elements, do not voluntarily, within one hundred days thereafter, make provisions for reconstruction, which plan must have the unanimous approval of

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 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 Map and the Articles and 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 interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the 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. 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. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be based upon each Owner's percentage interest in the General Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(i) through (v) of this paragraph. The provisions contained in this subparagraph shall not hinder the protection given to a First Mortgagee under a mortgagee endorsement.

(d) If more than sixty-six and two-thirds percent of the total replacement cost of the Project, not including land, is destroyed or damaged, and if the Owners representing an aggregate ownership interest of seventy-five percent, 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 hereinabove. 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 subparagraphs (b) (i) through (v) of this paragraph.

(e) The Owners representing an aggregate ownership interest of eighty-five percent, 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 shall have the unanimous approval of all First Mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, then the expense thereof shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within 15 days after the adoption of such plan 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 by the Association 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 notified the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned in this subparagraph 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 independent appraiser. If either party fails to make such a nomination, the appraiser nominated shall within five days after default by the other party appoint and associate with him another independent appraiser. If the two appraisers designated by the parties, or selected pursuant thereto in the event of the default of one party, are unable to agree, they shall appoint another independent 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 independent appraisers 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 subparagraphs (b) (i) through (v) of this paragraph.

(f) The Owners representing an aggregate ownership interest of eighty-five percent, or more, of the General Common Elements may agree that the Units are obsolete and that the same should be sold. Such plan (agreement) must have the unanimous written 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 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 Map, the Articles 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 subparagraphs (b) (i) through (v) of this paragraph.

**29. Reservation to Enlarge and Supplement Condominium Project.**

(a) Declarant, for itself, its successors and assigns, expressly reserves the right to enlarge this Condominium Project by submitting additional real property and improvements. Such additions shall be expressed in and by a duly recorded Supplement to this Declaration and by filing for record an additional section or supplement to the Map. The reference to the Map and Declaration in any instrument shall be deemed to include any supplement to the Map and Declaration without specific reference thereto.

(b) Such Supplements to this Declaration shall provide for a division of such additionally submitted real property and improvements into Units. Each Condominium Apartment shall be separately designated, and each Building shall be identified by a symbol or designation dissimilar to any other building in the Condominium Project. The undivided interest in and to the General Common Elements appurtenant to each such Condominium Apartment shall not be a part of the General Common Elements of the Units described and initially created by this Declaration and the Map nor a part of the General Common Elements of subsequently submitted Units; provided, however, that all Owners of Units in this Condominium Project shall have a non-exclusive right in common with all of the other Owners to use the sidewalks, pathways, driveways, recreational facilities and all other General Common Elements within this entire Condominium Project so designated on the Map and all amendments and Supplements thereto.

(c) Except as may be otherwise provided by the provision of such Supplement(s) to this Declaration, all of the provisions contained in this Declaration shall be applicable to such additional Units submitted to this Condominium Project.

(d) As additional Units are submitted to this Condominium Project and in order that the common expenses of this Condominium Project be shared proportionately and equitably by the Owners of the initially submitted Units and the Owners of all subsequently submitted additional Units, the common expenses shall be proportionately shared according to the following:



<u>Type of Unit</u> (Approximate Square Footage)	<u>Percentage</u>
A (1800)	4.545
B (1800)	4.545
C (1100)	2.777
D ( 700)	1.767

and the aggregate of all of the percentage interests making up the then enlarged Condominium Project shall be considered one hundred (100%) percent for the purposes stated. (However, each Unit, regardless of the number of Owners, shall be entitled to one vote for all purposes hereunder and shall not change by the enlargement of the Condominium Project or otherwise.) Such percentages (for sharing common expenses and for voting purposes) for the initially submitted Units is the same as the appurtenant undivided percentage interest which is set forth after each Unit in Exhibit 2 hereof. The supplements shall set forth the applicable percentage of each Unit for the purposes stated herein. In the event that any additionally submitted Units differ substantially from the type of Units which are described herein and in Exhibit 2, such Supplement shall establish a different percentage interest for such Unit(s) for the sharing of common expenses and for voting purposes.

(e) For purposes other than the foregoing paragraphs of this Paragraph 29 (e.g., "insurable interest" for insurance), all Owners, regardless of when their Units were included hereunder, shall be deemed to have ownership interest in all tangible physical facilities which are designed for and used by all Owners of Units in the Condominium Project (e.g., recreational facilities).

(f) Each Owner shall have the nonexclusive right, together with all other Owners, to use all general common areas, open spaces, recreational facilities, grass and landscaping areas and all other areas in the Condominium Project which are not herein specifically dedicated to the use of less than all of the Owners. This easement shall be irrevocable and shall be for the purposes of ingress and egress, recreational and social use and shall apply to all property hereafter committed to this Condominium Project.

### 30. Condemnation.

(a) Consequences of Condemnation. If at any time or times during the continuance of 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 advance thereof, the provisions of this Section 30 shall apply.

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

(c) 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, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interests in the General 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 principle 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. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 28(c) of this Declaration.

(d) 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: (i) 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 to taking of or injury to the General Common Elements and shall be apportioned among Owners in proportion to their respective undivided interests in the General Common Elements, (ii) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned, (iii) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Unit involved, and (iv) the 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.

(e) Reorganization. In the event a partial taking results in the taking of a complete Condominium Apartment, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest in the General Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this 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 Section 31(b) hereof.

31. Miscellaneous.

(a) Duration of Declaration: Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of twenty-one years following the death of the survivor of Ethel Kennedy and the now living children of said person, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect until condominium apartment ownership of the Project and this Declaration are terminated or revoked as hereinafter provided.

(b) Amendment and Termination: Any provision contained in this Declaration may be amended or additional provisions may be added to this Declaration, or this Declaration and condominium apartment ownership of the Project may be terminated or revoked, by the recording of a written instrument or instruments specifying the amendment or addition or the fact of termination and revocation, executed by the Owners, as shown by the records in the office of the County Clerk of Eagle County, Colorado, of Units representing an aggregate ownership interest of seventy-five percent, or more, of the General Common Elements and not less than one hundred percent of the First Mortgagees; provided however, that in no event shall the undivided interest of an Owner be decreased without the unanimous consent of each Owner and each First Mortgagee.

(c) Effect of Provisions of Declaration: Each provision of this Declaration, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration shall:

(i) by virtue of acceptance of any right, title or interest in the Project or in any Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner;

(ii) be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Project and each Unit; and

(iii) be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Project and each Unit in favor of the Association.

(d) Protection of Encumbrancer: No violation or breach of or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgage, or other lien on any Unit taken in good faith and for value and perfected by recording in the office of the County Clerk, Eagle County, Colorado prior to the time of recording in said office of an instrument describing the Unit and listing the name or names of the Owner or Owners of fee simple title to the Unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such Mortgage, or other lien or the title or interest acquired by any purchaser upon foreclosure of any such Mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration; provided, however, that violations or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

(e) Limited Liability Indemnification: Neither Declarant, the Association, the Board of Directors of the Association, nor any officer, agent or employee of any of the same shall be liable to the Association or any Owner for any action or for any failure to act with respect to any matter so long as such Person was not guilty of fraud, gross negligence or bad faith in taking such action or failing to act.

The Association shall indemnify Declarant, each member of the Board of Directors of the Association, and any employee or agent of Declarant or the Association, against any loss or threat of loss as a result of any claim or legal proceeding relating to the performance or nonperformance of any act concerning the activities of the Association; provided, however, that with respect to the subject matter of the claim or legal proceeding the party against whom the claim is made or legal proceeding is directed was not guilty of fraud, gross negligence or bad faith in such performance or nonperformance.

The indemnification authorized by this subparagraph shall include payment of (i) reasonable attorney's fees or other expenses incurred in settling any claim or threatened action or incurred in any finally adjudicated legal proceeding; and (ii) expenses incurred in the removal of any liens affecting any property of the indemnitee. Indemnification shall be made from assets of the Association, and no Owner shall be personally liable to any indemnitee.

This subparagraph shall inure to the benefit of the Declarant, the Association, the members of the Board of Directors of the Association, the employees and agents of Declarant and the Association and their respective heirs, executors, administrators, successors and assigns.

(f) Supplemental to Law: 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.

(g) Numbers and Genders: 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.

(h) Registration by Owner of Mailing Address: Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to P. O. Box 112, Avon, Colorado 81620, c/o Robert Warner, Jr., agent for service, until such address is changed by a notice of address change duly recorded with the office of the Secretary of State of Colorado.

(i) Successors and Assigns: This Declaration shall be binding upon and shall inure to the benefit of the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

(j) Severability: Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

(k) Captions: The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

(l) No Waiver: Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

(m) Sales and Construction Facilities and Activities of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of construction and sale of the Units in the Project upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Units, including without limitation, a business office, storage area, construction yards, signs, model condominium apartments, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Units. In addition, Declarant shall have the right to ingress and egress over the General Common Elements and Limited Common Elements as in its discretion may be necessary to complete the Project.

32. Recreational Facilities. The recreational facilities of the Project shall consist of one swimming pool to be constructed by Declarant on the General Common Elements. Subject to any rules and regulations promulgated by the Association, said swimming pool shall be available for the use of all Owners and their Guests without any fees or charges in addition to the assessment for Common Expenses, provided that the Association may allow the general public to use said swimming pool and collect an appropriate charge therefor.

33. Protective Covenants. In addition to the terms, provisions and restrictions contained herein, the Property and the Project are subject to those certain Protective Covenants recorded in Book 225 at Page 302, Eagle County, Colorado records, and each Owner and his Guests shall, at all times, comply with the terms and provisions thereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 23 day of November, 1976.

WARNER PROPERTIES, INC.,  
a Colorado corporation

By: [Signature]

Attest: Robert W. Warner

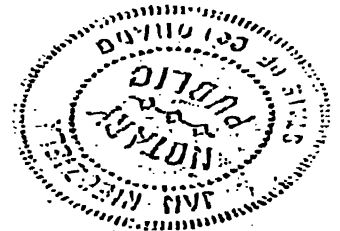
STATE OF COLORADO )  
                          ) ss:  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 23 day of November, 1976, by ROBERT WARNER as PRESIDENT and ROBERT W. WARNER as SECRETARY of Warner Properties, Inc.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires: 5-24-78 MY COMMISSION EXPIRES 5-24-78



SUBORDINATION

The undersigned, as Mortgagee under that certain Deed of Trust dated December 26, 1972 and recorded on January 23, 1973 in Book 227 at Page 377, Eagle County, Colorado records, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby subordinates said Deed of Trust to the terms and provisions of the foregoing Declaration of Covenants, Conditions and Restrictions.

Executed this 23rd day of November, 1976.

GROUSE MOUNTAIN AT VAIL, LTD.,  
a limited partnership

By: STONE CREEK COMPANY, a Colorado corporation, a General Partner

By: [Signature]  
President

Attest: Oline A. Bolt  
Assistant Secretary



STATE OF COLORADO )  
COUNTY OF Eagle ) SS:

The foregoing instrument was acknowledged before me this 23rd day of November, 1976, by Federick D. Green, as President and Oline A. Bolt as Assistant Secretary of Stone Creek Company, a Colorado corporation, a General Partner of Grouse Mountain at Vail, Ltd., a limited partnership.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires: MY COMMISSION EXPIRES 5-24-78

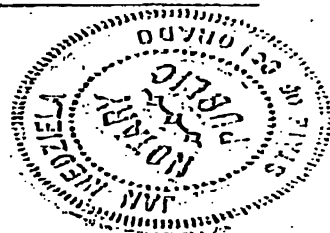


EXHIBIT 1

A portion of Lot 105, Block 3, Eagle Vail Subdivision  
Filing No. 1, Eagle County, Colorado, more particularly  
described as follows, to-wit:

Beginning at a point from which the most Southerly Corner  
of said Lot 105 bears S. 36°55'16" E. 46.50 feet distant;  
thence N. 44°40'00" E. 115.00 feet; thence N. 05°20'00" W.  
101.00 feet; thence N. 69°30'00" E. 59.08 feet to a point on  
the southerly right of way boundary of Columbine Circle;  
thence along said right of way boundary 40.08 feet on a  
curve to the right with a radius of 152.76 feet, the chord of  
which bears N. 22°34'46" W. 39.96 feet; thence W. 75°27'36" W.  
140.16 feet; thence S. 32°58'21" W. 155.38 feet; thence  
S. 36°55'16" E. 181.10 feet to the point of beginning.



REC JULY '85

9

SECOND SUPPLEMENT  
TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE NINETEENTH FAIRWAY TOWNHOUSE CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Warner Properties, Inc., a Colorado corporation (hereinafter referred to as "Declarant") has heretofore caused to be recorded in Book 250 at Page 329, Eagle County, Colorado records, a Declaration of Covenants, Conditions and Restrictions of the Nineteenth Fairway Townhouse Condominiums (the "Declaration"); and

WHEREAS, in Section 29 of the Declaration, Declarant, for itself, its successors and assigns, expressly reserved the right to enlarge the Condominium Project by submitting additional real property and improvements; and

WHEREAS, Declarant has heretofore submitted additional real property and improvements to the Condominium Project by that certain First Supplement to Declaration of Covenants, Conditions and Restrictions recorded in Book 254 at Page 434, and by that certain First Supplement to the Condominium Map of the Nineteenth Fairway Townhouse Condominiums recorded in Book 255 at Page 514, all in the records of the Clerk and Recorder of the County of Eagle, State of Colorado; and

WHEREAS, Declarant wishes to additionally submit to the Condominium Project the real property and improvements described on Exhibit I attached hereto and incorporated herein by reference.

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 and 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 which is or becomes subject to this Second Supplement to Declaration and improvements thereon, their grantees, successors, heirs, executors, administrators, devisees, or assigns.

1. General. The terms and provisions contained in this Second Supplement to Declaration of Covenants, Conditions and Restrictions of the Nineteenth Fairway Townhouse Condominiums shall be in addition and supplemental to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall be applicable to the real property described on Exhibit I attached hereto.

2. Division into Units. The real property described on Exhibit I hereto, including any improvements thereon, is hereby divided into eight units, each consisting of a separate fee simple estate in a particular Condominium Apartment and an appurtenant undivided fee simple interest in the General Common Elements. The undivided interest in the General Common Elements appurtenant to a particular Condominium Apartment is as set forth on Exhibit 2 attached hereto and incorporated herein by reference, such undivided interests being determined on the basis of the square footage contained in each particular Condominium Apartment in relation to the total square footage of all of the Condominium Apartments contained in the improvements constructed or to be constructed on the real property described on Exhibit I hereto. Each Owner shall own his own appurtenant undivided interest in the General Common Elements, as a tenant in common with all other Owners.

3. Limited Common Elements. A portion of the General Common Elements is reserved for the exclusive use of the Owners of certain of the Units and such areas are referred to as Limited Common Elements. The Limited Common Elements reserved for the exclusive use of the Owners of the respective Units are identified and shown on the Second Supplement to Condominium Map of The Nineteenth Fairway Townhouse Condominiums, subject to any supplement(s) thereto, and such General Common Elements shall be used by the Owner of such Unit to the exclusion of the use thereof by the other Owners of Units except by invitation.

4. Second Supplement to Condominium Map. The Second Supplement to the Condominium Map of The Nineteenth Fairway Townhouse Condominiums depicting the location of each Condominium Apartment, both horizontally and vertically, together with such other information as is required by the provisions of Section 2 of the Declaration, shall be recorded prior to the first conveyance of any Condominium Apartment situate on the real property described on Exhibit 1 hereto in order to permit the location, both horizontally and vertically, of said Condominium Apartments.

5. Description of Unit. After the Second Supplement to the Condominium Map and the Second Supplement to Declaration of Covenants, Conditions and Restrictions of The Nineteenth Fairway Townhouse Condominiums have been filed for record in the office of the Clerk and Recorder of the County of Eagle, State of Colorado, every contract, deed, lease, mortgage, deed of trust, will or other instrument shall legally describe a Unit as follows:

Unit No. \_\_\_\_\_, Building \_\_\_\_\_, The Nineteenth Fairway Townhouse Condominiums, according to the Condominium Map filed for record in Book 249 at Page 170 and the Second Supplement to Condominium Map filed for record in Book 260 at Page 443, and subject to the Declaration of Covenants, Conditions and Restrictions recorded on November 26, 1976, in Book 250 at Page 329 and the Second Supplement to Declaration of Covenants, Conditions and Restrictions recorded on \_\_\_\_\_, 1977 in Book \_\_\_\_\_ at Page \_\_\_\_\_, all in the records of the Clerk and Recorder of the County of Eagle, State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Apartment, 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 throughout and for use of the General Common Elements; the right to the appropriate exclusive use of the Limited Common Elements and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in the Declaration and this Second Supplement to Declaration.

6. Assessment for Common Expenses. Notwithstanding anything to the contrary in this Second Supplement to Declaration or in the Declaration contained (including, but not limited to Paragraphs 19 and 29 of the Declaration), each Owner of a Unit situate on the real property described on Exhibit 1 attached hereto shall be responsible and pay his share of the common expenses of the Condominium Project based on a proportion which is equal to one and one-half (1 1/2) times the proportion that his Condominium Apartment bears (on a square footage basis) to all of the Condominium Apartments comprising the Condominium Project.

7. Easements. Each Owner shall have the non-exclusive right and easement together with all other Owners to use all of the General Common Elements, open spaces, recreational facilities, grass and landscaping areas and all the other areas in the Condominium Project which are not specifically designated to the use of less than all the Owners. This easement shall be in addition to those easements as set forth in Section 14 of the Declaration, shall be irrevocable and shall be for the purposes of ingress and egress, recreational and social use and shall apply to all of the real property hereinbefore and hereinafter submitted to the Condominium Project.

8. Water Meter Easement. The water meter for Building C, situate upon the real property described on Exhibit 1 hereto, is situate in the Condominium Apartment which comprises part of Unit 25, Building C, and said Condominium Apartment shall at all times be owned, held, used, transferred and occupied subject to an easement for access through said Condominium Apartment by the Association, Managing Agent or water company employee, as may be necessary for the reading, repair and/or replacement of said water meter.

9. Reservation. Declarant hereby reserves the right to further enlarge the Condominium Project as provided in Section 29 of the Declaration.

10. Miscellaneous.

a. Invalidity or unenforceability of any provision of this Second Supplement to Declaration, in whole or in part, shall not affect the validity or enforceability of any other provision or any valid and enforceable part of any provision of this Second Supplement to Declaration.

b. The provisions of this Second Supplement to 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.

IN WITNESS WHEREOF, Declarant has executed this Second Supplement to Declaration this 20th day of September, 1977.

WARNER PROPERTIES, INC.,  
a Colorado corporation

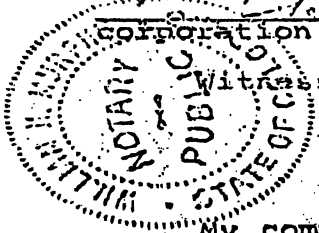
By: [Signature] President

Attest: [Signature] Sec.

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF EAGLE    )

The foregoing instrument was acknowledged before me this 27th day of September, 1977, by [Signature] as President and [Signature] as Secretary of Warner Properties, Inc., a Colorado corporation.

Witness my hand and official seal.



[Signature]  
Notary Public

My commission expires: January 6, 1981

EXHIBIT 1

A part of Lot 105, Block 3, Eagle Vail Subdivision Filing No. 1, County of Eagle, State of Colorado, more particularly described as follows, to wit:

Beginning at the most Southerly Corner of said Lot 105; thence N.36°55'16"W. 46.50 feet along the Westerly Line of said Lot 105; thence N.44°40'00"E. 115.00 feet to the True Point of Beginning; thence N.05°20'W. 101.00 feet; thence N.69°30'00"E. 59.08 feet to a point on the southerly right of way line of Columbine Circle; thence, along said southerly right of way line 108.18 feet along a curve to the left with a radius of 152.76 feet, the chord of which bears S.50°22'57"E. 105.93 feet; thence S.67°10'W. 138.40 feet to the True Point of Beginning.

Said parcel of land contains 0.20 of an acre, more or less.

does hereby certify that the condominium map of SECOND SUPPLEMENT TO THE CONDOMINIUM MAP OF NINETEENTH FAIRWAY TOWNHOUSE CONDOMINIUMS is filed in conjunction with the Condominium Declaration for SECOND SUPPLEMENT TO THE CONDOMINIUM MAP OF NINETEENTH FAIRWAY TOWNHOUSE CONDOMINIUMS as filed and recorded in the Office of the Clerk and Recorder of Eagle County.

EXHIBIT 2

<u>Unit</u>	<u>Building</u>	<u>Square Footage (approximate)</u>	<u>Undivided Interest The General Common Elements</u>
19	C	725	.1
20	C	1075	.15
21	C	725	.1
22	C	1075	.15
23	C	725	.1
24	C	1075	.15
25	C	725	.1
26	C	1075	.15

AMENDMENT TO  
SECOND SUPPLEMENT

TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE  
NINETEENTH FAIRWAY TOWNHOUSE  
CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

The Second Supplement to the Declaration of Covenants, Conditions and Restrictions of the Nineteenth Fairway Townhouse Condominiums recorded September 29, 1977 in Book 260 at Page 444 as Reception Number 156791 of the records of Eagle County, State of Colorado, is hereby amended as follows:

Paragraph Five is amended as follows:

5. Description of Unit. After the Second Supplement to the Condominium Map and the Second Supplement to the Declaration of Covenants, Conditions and Restrictions of The Nineteenth Fairway Townhouse Condominiums and the amendments thereto have been filed for record in the office of the Clerk and Recorder of the County of Eagle, State of Colorado, every contract, deed, lease, mortgage, deed of trust, will or other instrument shall legally describe a Unit as follows:

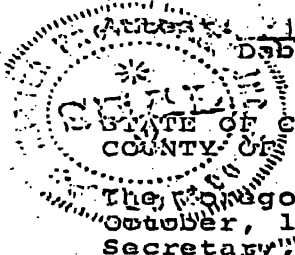
Unit \_\_\_\_\_, Building C, The Nineteenth Fairway Townhouse Condominiums, according to the Condominium Map filed for record in Book 249 at Page 170 and the First Supplement to Condominium Map filed in Book 255 at Page 514 and the Second Supplement to the Condominium Map filed in Book 260 at Page 443 and the Amendment to the Second Supplement to Condominium Map filed and subject to the Declaration of Covenants, Conditions and Restrictions filed in Book 250 at Page 329 and the First Supplement to Declaration of Covenants, Conditions and Restrictions filed in Book 254 at Page 434 and the Second Supplement to Declaration of Covenants, Conditions, and Restrictions filed in Book 260 at Page 444 and the Amendment to the Second Supplement to the Declaration of Covenants, Conditions and Restrictions filed all in the records of the Clerk and Recorder of the County of Eagle, State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Apartment, 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 throughout and for use of the General Common Elements; the right to the appropriate exclusive use of the Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances covenants, conditions and restrictions created in the Declaration and this Second Supplement to Declaration and the Amendments thereto.

WARNER PROPERTIES, INC.

Deborah W. Warner, Sec.

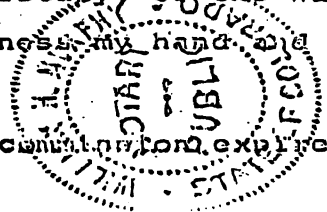
BY: Robert Warner, Jr., President



STATE OF COLORADO )  
COUNTY OF EAGLE ) ss.

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October, 1977, by Robert Warner, Jr., as President, and Deborah W. Warner Secretary of the Warner Properties, Inc., a Colorado corporation.

Witness my hand and official seal.



Notary Public

My commission expires: January 6, 1981

EXHIBIT 2

<u>UNIT</u>	<u>BUILDING</u>	<u>SQUARE FOOTAGE</u> (Approximate)	<u>UNDIVIDED INTEREST IN THE</u> <u>GENERAL COMMON ELEMENTS</u>
1	A	1,800	.125
2	A	1,800	.125
3	A	1,800	.125
4	A	1,800	.125
5	A	1,800	.125
6	A	1,800	.125
7	A	1,800	.125
8	A	1,800	.125

1.00

146599

STATE OF COLORADO }  
County of EAGLE } ss.  
I being duly sworn and sworn in  
find for record in my office as

NOV 26 1976

in 3<sup>rd</sup> District, and received  
by book 250 Page 329  
MAYNARD E. BAZZ, County Clerk  
By James C. [Signature] Deputy  
36.00 04

HERBER PROPERTIES, INC  
P.O. DRAWER B-102  
AROW  
COLORADO 80520