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SUBSTITUTED  
CONDOMINIUM DECLARATION  
FOR  
THE EAGLERIDGE-ATRIUMS CONDOMINIUMS,  
A CONDOMINIUM

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SUBSTITUTED  
CONDOMINIUM DECLARATION  
 FOR  
THE EAGLERIDGE-ATRIUMS CONDOMINIUMS,  
A CONDOMINIUM

RECITALS:

ATRIUMS HOLDING COMPANY, a Colorado corporation (hereinafter called the "Declarant"), is the owner of all of the real property situated in the County of Routt, State of Colorado, described in Exhibit "A" attached to this Substituted Condominium Declaration and by this reference made a part hereof.

On April 9, 1985, Caltenco-Colorado, Inc., a Colorado corporation, the predecessor owner of all of the real property described on Exhibit "A" hereto, recorded with the Clerk and Recorder of Routt County, Colorado, a certain Condominium Declaration for The EagleRidge-Atriums Condominiums, recorded in Book 605, beginning at Page 1359, Routt County records (the "Old Declaration"), filed with such Clerk and Recorder on April 9, 1985, a Condominium Map for certain condominium units described in the Old Declaration, in File No. 9785, Routt County records (the "Condominium Map"), and caused to be executed and filed with the Secretary of State of Colorado certain Articles of Incorporation for The EagleRidge-Atriums Unit Owners' Association, a Colorado non-profit corporation (the "Association"). Declarant is the owner of all of the ~~condominium units described in the Old Declaration and shown on the Condominium Map, is the owner of all of the general and limited common elements of such~~ Condominium, is the owner of all of the real property described in Exhibit "A" hereto and of all of the real property described in Exhibit "A" to the Old Declaration, is the sole member of the Association, and is therefore entitled to amend the Old Declaration, pursuant to and in accordance with Article 10 of the Old Declaration.

Declarant does hereby amend the Old Declaration pursuant to Article 10 thereof by substituting this Substituted Condominium Declaration in its entirety for the entirety of such Old Declaration, and Declarant does hereby declare its intent that each and all provisions of the Old Declaration are null and void and of no further force or effect whatsoever but are replaced, by amendment, in their entirety by all of the provisions of this instrument. Further, with the limitations set forth in Paragraph 3(b) below, Declarant does hereby adopt, ratify and confirm the Condominium Map and does hereby declare that such Condominium Map shall be the condominium map (including airspace maps) referred to in this Substituted Condominium Declaration. Finally, as the sole member of the Association, Declarant will cause the directors and officers of the Association to file Amended and Restated Articles of Incorporation of the Association. All right, title and interest of the Association in and to its

assets and properties shall continue to be held by such Association. Declarant states and acknowledges that there are is one deed of trust encumbering the real property described on Exhibit "A" hereto, in which the beneficiary is Security First Federal Savings Bank of Dyersburg, Tennessee, recorded in Book 640, Page 1057, Routt County records. The Public Trustee of Routt County and such beneficiary have consented to, joined in, and approved this Substituted Condominium Declaration.

Declarant desires to establish a condominium project under the Condominium Ownership Act of Colorado (the "Act"), C.R.S. §§38-33-101 et seq., and under C.R.S. §§38-32-101 et seq., and to define the character, duration, rights, obligations and limitations of condominium ownership in such project. There is now situated on the property described in Exhibit "A" hereto one (1) building containing seven (7) separately designated air space units. The Condominium Map shows the location of such building on the property described in Exhibit "A" hereto, which is hereby made subject to this Substituted Condominium Declaration.

Declarant does hereby establish a plan for the ownership of real property estates in fee simple consisting of the air space contained in each of the air space units in the building and the co-ownership, by the individual and separate owners thereof, as tenants in common, of all of the general common elements which are described in this Substituted Condominium Declaration.

DECLARATION

Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its successors and assigns, and to any person acquiring or owning an interest in the real property which is or becomes subject to this ~~Substituted Condominium Declaration, their heirs, successors, heirs, executors, administrators, devisees or assigns.~~

1. Definitions. As used in this Substituted Condominium Declaration, unless otherwise provided:

(a) "Air space unit" means an undivided airspace unit consisting of a room or rooms enclosed within perimeter walls, floors, ceilings, windows and doors and occupying all or part of a floor or floors in the building constructed on the real property described in Exhibit "A" to this Substituted Condominium Declaration, and as shown and described in the Condominium Map, together with (i) all fixtures and improvements therein, (ii) the inner decorated or finished surfaces of such unit's perimeter walls, floors, ceilings and doors, (iii) the interior nonsupporting portion of perimeter doorjams and window wells, and (iv) the interior nonsupporting and nonbearing walls, lofts and stairways, within the unit. An "air space unit" shall not include, however, the undecorated and unfinished surfaces of the perimeter walls, floors, ceilings and doors of a unit, perimeter windows, any utilities running through the unit which serve more than one unit, or any other general common element or part thereof located within the unit.

(b) "Condominium unit" or "unit" means an air space unit together with the undivided interest in the general common elements appurtenant thereto and the right to exclusive or non-exclusive use of limited common elements assigned thereto.

(c) "Owner" means any individual, corporation, partnership, association, trust or other legal entity which is the record owner of an undivided fee simple interest in any condominium unit, including a contract seller but excluding those having such interest merely as security for the performance of any obligation, and where the context clearly requires, "owner" also means all co-owners of undivided fee simple interests in such condominium unit.

(d) "General common elements" means (i) the land described in Exhibit "A" attached hereto, but excluding all of the air space units within the building on such land; (ii) perimeter walls, floors and ceilings, perimeter doors and supporting doorjams, and perimeter windows of each air space unit; foundations; supporting and bearing walls, columns, girders and beams; ebbes; and bells, foyers, corridors, lobbies, stairs, stairways, elevators, fire escapes, and entrances and exits of the building outside of the air space units; (iii) courts, terraces, patios, decks, sidewalks, walkways, yards, gardens, automobile parking areas, garages, garage/entries, driveways and entries, storage areas and common recreation areas and facilities situated within the building or on the land described in Exhibit "A" hereto outside of the air space units; (iv) the installations, equipment, wiring, lines, and materials making up the central services in the building, such as telephone lines, cable television lines and equipment, fireplace flues, electric lines, gas and water and sewer lines, central heating and air conditioning equipment (except such portion of such installations, equipment, wiring, pipes, and materials located entirely within the perimeter airspace of an air space unit, the removal of which would in no way affect service to any other air space unit or general common element, such portion being deemed a part of the airspace of such air space unit); (v) the tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use on, under or within the building; and (vi) all other parts of the property specifically designated as general common elements on the Condominium Map.

(e) "Limited common elements" means the parts of the general common elements assigned for the exclusive or non-exclusive use and enjoyment of the owner or owners of one or more, but less than all, of the condominium units, as described in Exhibit "B" hereto or as may generally be shown and designated on the Condominium Map.

(f) "Common expenses" means: (i) all expenses expressly declared to be common expenses by this Substituted Condominium Declaration or by the Bylaws of the Association, together with all funds assessed for the creation, funding or maintenance of reserves; (ii) all expenses of administering, insuring, conserving and managing the general common elements, other than fireplaces, including the limited common elements, and all of the real and personal property owned by the Association; (iii) all expenses of cleaning, maintaining, repairing and replacing the general common elements and all of the real and personal property owned by the Association, but excluding such expenses for the limited common elements; (iv) expenses of paying, amortizing or discharging mortgages,

deeds of trust, liens and encumbrances on general common elements or on recreational facilities or improvements consisting entirely of general common elements, or on property owned by the Association; provided, however, that without the prior written consent of at least two-thirds of the first lienors (based upon one vote for each first mortgage owned) and the owners of at least two-thirds of the condominium units then subject to this Substituted Condominium Declaration, the Association shall not be entitled to encumber the general common elements; (v) real property taxes and special assessments on general common elements and property owned by the Association or otherwise not attributable to any air space unit; general and special assessments to the Condominium Project or any of the condominium units by the EagleRidge Property Owners' Executive Association; management fees for professional property management contracted for by the Association; water and sewage disposal fees and charges to all condominium units, general common elements and property of the Association; public telephone expenses; all utility charges to general common elements and property owned by the Association; trash collection charges; snow removal expenses; legal and accounting fees for Association activities; television cable installation, repair, improvement and user charges and fees; and income taxes and assessments imposed on Association income or receipts; and (vi) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

(g) "Percentage of Common Expense Responsibility" means the pro rata share of liability for payment of the common expenses and general and special assessments of the Association, as calculated pursuant to subparagraph 8(a) herein, allocated to a unit and the owner thereof.

(h) "First lienor" means a holder of a promissory note payment of which is secured by a first-lien mortgage or first-lien deed of trust encumbering an interest in a condominium unit. "Mortgage" shall include a deed of trust, and "mortgagee" shall include the beneficiary of a deed of trust.

(i) "Association" means The EagleRidge-Atriums Unit Owners' Association, an existing Colorado nonprofit corporation, the members of which shall consist of all of the Owners of units.

(j) "Building" means the building structure containing air space units located on the real property described in Exhibit "A" to this Substituted Condominium Declaration.

(k) The condominium units subject to this Substituted Condominium Declaration shall be known as "The EagleRidge-Atriums Condominiums."

(l) "Substituted Condominium Declaration" means this instrument and all amendments to this instrument hereafter recorded in the real property records of Rout County, Colorado.

(m) "Project" or "Condominium Project" means the entirety of general and limited common elements, buildings, air space units, real and personal property owned by the Association, and all improvements and structures to or on the general common elements and real property owned by the Association, in existence

at any time and which are then subject to this Substituted Condominium Declaration.

(n) "Map" or "Condominium Map" means the condominium map previously prepared with respect to the property described in Exhibit "A" to the Old Declaration and the air space units thereon, and filed for record in File No. 9785, Routt County real property records.

(o) "Declarant" means Atriums Holding Company, a Colorado corporation.

2. Division of Real Property into Estates; Use and Occupancy of Condominium Units.

(a) Units. The land described in Exhibit "A" hereto and the airspace above such land are hereby divided into seven (7) condominium units in one (1) building, each consisting of an air space unit whose boundaries are delineated on the Map, together with a vested percentage undivided ownership interest in the general common elements appurtenant to such air space unit, the exclusive or non-exclusive right to use and enjoy the specific limited common elements described in Exhibit "B" hereto as being appurtenant to such air space unit, or designated on the Map as being appurtenant to such air space unit, and together with membership in the Association. Such condominium units are described and numbered as follows:

Unit 24	Unit 28
Unit 25	Unit 29
Unit 26	Unit 30
Unit 27	

The vested percentage undivided ownership interest in the general common elements appurtenant to each such air space unit, and the description of all limited common elements appurtenant to such condominium units, are set forth and scheduled or described in Exhibit "B" to this Substituted Condominium Declaration. The recording data for recorded easements and licenses appurtenant to or included in the property described in Exhibit "A" hereto or to which any portion of such property is or may be subject are set forth in such Exhibit "A."

(b) Owners' Easement. Each owner is vested with and shall have during his period of ownership, for his own use and the use of his guests, employees, agents and invitees, a non-exclusive easement in common with all other unit owners in the Condominium Project on, over and across all exterior motor vehicle driveways and roads and all pedestrian walkways and sidewalks surfaced with concrete or asphalt, as are now situated or as may hereafter be constructed by the Association on the general common elements outside of the building and on real property owned by the Association outside of the building, for purposes of ingress and egress to such owner's unit from public streets near the Condominium Project; provided, however, that (i) no owner shall, by reason of such non-exclusive easement, have any right or privilege to use or occupy any limited common elements which have not been assigned to such owner by this Substituted Condominium Declaration, (ii) such easement shall not exist upon or burden or encumber any land under any structure or building, nor those parts of the real property owned in fee simple by the Association upon which there are no exterior

motor vehicle driveways or roads and no walkways or sidewalks surfaced with concrete or asphalt, (iii) such easement is subject and subordinate to the right and authority of the Association to construct, locate and place improvements and structures on general common elements and on real property owned by the Association, and (iv) such easement is subject also to reasonable regulations of use as may be adopted and amended from time to time by the Association. Such easement shall be appurtenant to each owner's unit, shall run with such unit to the respective successive owners thereof and shall be irrevocable, but such easement shall terminate and cease automatically (i) on any real property of the Association at the time such real property of the Association is hereafter conveyed in fee simple to a person or an entity which is not an association of unit Owners in the Project, and (ii) on any part of the general common elements hereafter conveyed pursuant to paragraphs 10 or 11 of this Substituted Condominium Declaration, in each instance as of the time of conveyance.

(c) Inseparability. An air space unit shall at all times be inseparable from the general common elements appurtenant thereto, and neither the air space unit nor its appurtenant interest in general common elements may ever be conveyed, leased, devised or encumbered separately from the other. Title to a condominium unit, however, may be acquired, held, encumbered and conveyed individually or in any form of concurrent ownership recognized in the State of Colorado.

(d) Description in Instruments. Every contract of sale, deed, lease, deed of trust, mortgage, lien, or other instrument recorded in the Routt County property records and affecting a condominium unit shall describe it by its air space unit number as shown on the Map, followed by the name "The EagleRidge-Atriums Condominiums," followed by specific reference to this Substituted Condominium Declaration, and also followed by specific reference to the Map. "Specific reference" as used in the previous sentence shall mean the book and page or file number recording data from the Routt County real property records.

(e) Notice to Assessor. Declarant shall give written notice to the assessor of Routt County, Colorado, of the creation of this Condominium Project in the manner provided in the Act, so that each condominium unit will be separately assessed and taxed and so that all taxes, assessments and charges which may become liens prior to a first mortgage under Colorado law shall relate only to the individual condominium units and not to the Condominium Project as a whole.

(f) Use of Condominium Units. Each condominium unit shall be used and occupied solely for residential or dwelling or lodging purposes, including (but not limited to) nightly and transient rentals; provided, however, that the Declarant or the Association or the managing agent of the Association may use one or more of the condominium units as model or show units, for a sales office or management office, for office and clerical purposes, for employee housing, for storage, and for any lawful purposes. Owners of units may rent or lease units to others for residential, dwelling or lodging purposes, provided, however, that each such lease or rental agreement must be in writing and be subject to the requirements and provisions of this Substituted Condominium Declaration and of the Amended and Restated Articles of Incorporation, Bylaws and rules and regulations of the Association.

(a) Prior Map. Caltenco-Colorado, Inc., previously prepared, executed and filed for record in Routt County, Colorado, a condominium map (herein called the "Map" or "Condominium Map") at File No. 9785, Routt County records. Such Condominium Map contains a survey description of the airspace of each air space unit and also contains each of the following:

- (1) A legal description of the land subjected by the Old Declaration to condominium ownership pursuant to the Act, and a boundary survey;
- (2) The linear measurements and location, with reference to surveyed points on the exterior boundary of the land, of the completed foundations of the building on such land;
- (3) The diagrammatic floor plans and linear horizontal and vertical dimensions of the perimeter of each air space unit;
- (4) The designation by number of each air space unit in the building;
- (5) The location of each air space unit within the building, both horizontally by linear measurements and vertically by reference to elevations as established from a datum plane, including measurement of the thickness of common walls and floors between or separating units and perimeter walls of the building;
- (6) Depiction and designation of certain general and limited common elements, without showing dimensions or exact surveyed location thereof; and
- (7) Other information originally included in the discretion of Caltenco-Colorado, Inc.

(b) Ratification and Approval of Map. The legal description contained in the Certificate of Dedication and Ownership on the original Condominium Map in File No. 9785 contained certain typographical errors. The correct legal description is set forth in the survey information of the perimeter boundary line of the land as shown on Sheet 2 of such Condominium Map, and the correct legal description is set forth on Exhibit "A" to this Substituted Condominium Declaration. Except as to the legal description of the land contained in such Certificate of Dedication and Ownership on Sheet 1 of the Condominium Map as filed for record, such Condominium Map is hereby ratified, adopted and approved by Declarant and is declared to be the condominium map to which this Substituted Condominium Declaration refers. Declarant hereby substitutes the legal description set forth on Exhibit "A" to this Substituted Condominium Declaration for the legal description of the land contained in the Certificate of Dedication and Ownership on Sheet 1 of the original Condominium Map.

(c) Reservation of Right to Amend. Declarant reserves the right for a period of 3 years after recording of this Substituted Condominium Declaration in the real property records of Routt County to amend the Map to conform it to the actual location of the building (including all parts thereof) and to establish, vacate and relocate easements.

4. General Common Elements; Encroachments.

(a) Ownership of General Common Elements. All of the general common elements on the real property described in Exhibit "A" hereto shall be owned by all of the owners of air space units situated on such property as described in subparagraph 2(a), as tenants in common, subject to the easement in favor of all owners described in subparagraph 2(b). No owner shall assert any right of partition with respect to the general common elements, and the general common elements shall remain undivided and may never be partitioned, except pursuant to paragraphs 10 or 11 herein. Each owner waives any and all rights of partition he may hold by virtue of his ownership of an undivided interest in the general common elements as a tenant in common with the other owners. Further, no air space unit may be further subdivided and conveyed in parts or partitioned in kind among the owners of undivided interests therein; that is, the right of further subdivision or partition in kind of a single air space unit by or among the owners thereof is hereby expressly denied. However, a unit Owner may move, remove, or modify non-bearing walls within the boundaries of such Owner's unit, so long as no part of the general or limited common elements or the exterior appearance of the building is affected thereby. In addition, Owners of adjacent condominium units may break through and alter any of the general common element building components between such adjacent units to provide interior connection between them, so long as utility lines and the structural integrity of bearing walls are not affected and provided that such Owners shall first obtain the approval of the Board of Directors of the Association, whose approval shall not unreasonably be withheld. Such interior connection may subsequently be closed off by the Owner of either of the adjacent units. General common elements not described as limited common elements on Exhibit "B" hereto or not shown as limited common elements on the Map may not hereafter be allocated as limited common elements.

(b) Use of General Common Elements. Each owner shall be entitled to use the general common elements in accordance with the purposes for which they are intended, without hindering, impeding or imposing upon the rights of the other owners and in accordance with rules and regulations duly established from time to time by the Association. The Association shall have the right and power to charge reasonable admission and other fees for the use of any recreational facility which is a part of the general common elements or which is situated on property owned by the Association.

(c) Encroachments. If any portion of the general common elements encroaches upon any air space unit, or if any air space unit encroaches upon any other air space unit or upon any portion of the general common elements, or if any portion of the general common elements encroaches upon any real property owned by the Association, or if any air space unit encroaches upon any real property owned by the Association, as a result of the construction of the building, or if any such encroachment shall occur hereafter as a result of settling or shifting of the building, a valid easement for the encroachment and for the maintenance of the same, so long as such building stands, shall exist. In the event the building, any air space unit, any adjoining air space unit, or any adjoining general common element, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachment of any part of the general

common elements upon any air space unit or upon any real property owned by the Association, and encroachment of any part of the real property owned by the Association upon any air space unit or upon the general common elements, and encroachment of any part of any air space unit upon any other air space unit or upon any general common elements or upon any real property owned by the Association, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the restored or reconstructed building shall stand. Each unit and every portion of the general common elements shall have an easement for lateral and subjacent support from every other unit and portion of the general common elements and from real property owned by the Association.

#### 5. Mechanic's Liens; Indemnification.

(a) Limitation on Mechanic's Liens. If any owner shall cause any material to be furnished to his air space unit or any labor to be performed therein, neither the Association nor an owner of any other condominium unit shall be liable for the payment of any cost or expense incurred or for the value of any work done or materials furnished. All such work performed and materials furnished shall be at the sole expense of the owner causing it to be done or furnished, and such owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his air space unit or any improvements therein. No owner and no person claiming through, with or under an owner shall be authorized, empowered or permitted to lien, encumber or charge the general common elements or any property of the Association or any air space unit other than such owner's condominium unit with any mechanic's lien or materialmen's lien. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the general common elements or against any property of the Association or against any owner's air space unit for work or labor done or for supplies, equipment or materials furnished to any other owner's air space unit are hereby expressly denied.

(b) Indemnification. If, because of any act or omission of any owner, any mechanic's or materialmen's lien shall be recorded in the Routt County real property records against the general common elements or against any property of the Association or against any other owner's air space unit, whether or not such lien is valid or enforceable, then the owner whose acts or omissions form the basis for such lien shall at his own cost and expense cause such lien to be released and discharged of record within 30 days after the date of recording thereof, and such owner shall further indemnify and save all the other unit owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages, including attorneys' fees, resulting from such lien. In the event that such owner shall fail to so release such lien within such 30 days, the Association may (but is not obligated to) obtain the release of such lien, and all costs and expenses (including attorney's fees) of the Association incurred in obtaining such release shall be a special assessment of the Association to such owner only, payable immediately, for which the Association shall have the lien and collection rights and remedies as are provided in paragraph 8 of this Substituted Condominium Declaration.

#### 6. Administration, Management and Voting.

(a) Administration and Managing Agent. The EagleRidge-Atriums Condominiums shall be administered and managed pursuant to this Substituted Condominium Declaration and the Amended and Restated Articles of Incorporation and Bylaws of the Association. Subject to the reservation in Declarant contained in paragraph 20(c) herein, the Board of Directors of the Association may contract with or employ any managing agent for the Association, pursuant to its Amended and Restated Articles of Incorporation or Bylaws, to perform inter alia any of the duties, services, powers and responsibilities of the Association set forth in this Substituted Condominium Declaration or in its Amended and Restated Articles of Incorporation or Bylaws; provided, however, that any contract or agreement for professional property management, and any contract providing for services by Declarant, may not exceed 3 years and must contain a provision allowing termination by either party without cause and without payment of a termination fee on 90 days' or less written notice. The Association may record in the real property records of Routt County, Colorado, from time to time its acknowledged certification of the name and address of its managing agent, which certificate shall be conclusive evidence of the identity of such managing agent until a later certificate is recorded.

(b) Membership in Association. Each owner (including Declarant as respects condominium units from time to time owned by Declarant) shall be a member of the Association and shall remain a member until he ceases to be an owner. Each owner of an undivided fee interest in a condominium unit amounting to less than the entire fee interest in such unit, including a co-owner as tenant-in-common or in joint tenancy, shall be a member of the Association. Each member shall comply strictly with the provisions of this Substituted Condominium Declaration and of the Amended and Restated Articles of Incorporation and Bylaws of the Association. All of the owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact, in their name, place and stead, with the power and for the purpose of repairing, maintaining, improving, replacing, and otherwise dealing with the general common elements, and selling, granting and conveying any part of or any interest in the general common elements, subject to the restrictions contained in paragraph 19 of this Substituted Condominium Declaration.

(c) Votes. Each condominium unit subject to this Substituted Condominium Declaration shall be allocated one (1) vote for each .01 percent of Percentage of Common Expense Responsibility for such condominium unit, as calculated pursuant to subparagraph 8(a) herein, on all and any matters to be voted on by the members of the Association. If a unit is owned in undivided interests by more than one person or entity, then all persons and entities owning fee simple interests in such unit shall from time to time, by majority vote amongst them or by any other method to which they all agree, select and designate in writing to the Association one individual who shall be entitled to vote and cast the votes allotted to such unit. Division of the votes allocated to a single unit among multiple owners of such unit shall not be allowed; rather, the votes allotted to a unit shall be voted entirely and undivided for or against or in abstention of an issue or matter put to vote among the members of the Association.

(d) Rules and Regulations. Each member and his guests, invitees and tenants shall be bound by and shall comply with rules, regulations, resolutions and decisions of the Association duly made and adopted in the manner set forth in the Amended and Restated Articles of Incorporation or Bylaws. Failure of a member, or the guests, invitees or tenants of such member, to comply with any such provision, rule, regulation, resolution or decision shall be grounds for an action to recover actual damages or to obtain injunctive relief, or both, together with attorney's fees and costs, maintainable by the Association on behalf of the owners or, in a proper case, by an aggrieved owner. Further, where a specific rule or regulation provides for assessment of a liquidated damage sum by the Association for violation thereof, then the failure of a member, or a guest or invitee or tenant of such member, to comply with such rule or regulation shall cause, at the sole option of the Association and on notice to such member, such liquidated damage sum to be a special assessment against such member's unit only, for which the Association shall have the lien and collection rights and remedies as are provided in paragraph 8 herein. In addition, the Association or its managing agent may, during the period any general or special assessment is past due and unpaid by a member or during the period of any failure by a member, or a guest or invitee or tenant of such member, to comply with any such rule or regulation referred to in the preceding sentence, (a) suspend the right of such delinquent member and his guests, invitees and tenants to use general common elements and property owned by the Association (provided that access to such member's unit shall never be denied), (b) cause utility service to the member's condominium unit to be suspended, and/or (c) suspend the voting rights and privileges in the Association allotted to such unit. However, the powers in the preceding sentence may be exercised only after at least 3 days' advance written notice given by the Association to the delinquent member and to the first lienor of the affected unit. Further, no suspension of voting rights shall affect the rights of any first lienor to vote pursuant to a proxy granted in connection with a first mortgage on the affected unit.

#### 7. Maintenance and Repairs.

(a) Maintenance of Unit. Each owner shall be responsible for maintenance and repair of his air space unit, including fixtures and improvements and all utility lines and equipment located therein and serving such unit only, and including any fireplaces situated within such unit. In performing such maintenance and repair, or in improving or altering his air space unit, an owner shall not do nor permit to be done any act or work which impairs any bearing wall or the structural soundness of the building or alters any general common element (except as permitted by subparagraph 4(a) herein) or which interferes with any easement encumbering the Condominium Project or vested in the Declarant or the Association.

(b) Maintenance of Common Elements. The general common elements shall be administered, insured, conserved, managed, maintained, cleaned, repaired and replaced by the Association. All of the costs and expense of administering, insuring, conserving and managing the general common elements are common expenses. All of the costs and expense of maintaining, cleaning, repairing and replacing general common elements, other than and excluding all limited common

elements, are common expenses. None of the costs and expense of maintaining, cleaning, repairing or replacing limited common elements are common expenses, but rather such costs and expense for any limited common element shall be allocated, charged, levied and collected by the Association as special assessments against the owners of units to which use and enjoyment of such limited common element have been assigned, such allocation to each such owner to be made in the proportion that the Percentage of Common Expense Responsibility of such owner's unit bears to the total of the Percentages of Common Expense Responsibility of all units to which use and enjoyment of such limited common element have been assigned. None of the costs and expense of maintaining, cleaning, repairing or replacing a fireplace within a unit are common expenses; rather, all such costs and expense shall be the sole responsibility and liability of the owner of the unit in which such fireplace is situated.

(c) Emergencies. The officers, employees, agents and contractors of the Association may have access to any unit at any time during an emergency, and otherwise from time to time during business hours and after reasonable notice to the owner thereof, for purposes of administering, conserving, managing, maintaining, repairing, renovating or replacing general common elements, including limited common elements, or to reconstruct a portion of the Project pursuant to paragraph 10. An "emergency" shall mean any situation or condition in which a reasonably prudent man would conclude that there exists (i) a clear and present danger of injury to any person or (ii) an immediate necessity to make emergency repairs within such unit in order to prevent substantial and immediate damage to general or limited common elements or to another air space unit. The cost to repair any damage to an air space unit (including its exterior doorway) resulting from entry therein by an officer, employee, agent or contractor of the Association during an emergency shall be a common expense of all the owners, unless such emergency is proximately caused by the negligence or wrongful act of the owner or occupant of the unit which is entered, in which case such owner shall repair and be liable for all the costs of repairing such damage to his unit. Each owner shall pay all costs of repairing, renovating and replacing the general common elements (including the limited common elements) and any part of a unit other than his own required by reason of damage thereto proximately caused by the willful and wanton act or negligence of such owner, which costs shall be a special assessment against such owner's unit.

(d) Payment of Utility Expenses. Each owner shall be responsible for prompt payment of all billings for electricity, telephone and natural gas supplied to the owner's unit and to the limited common elements allocated to such unit. The Association may (but shall not be required to) bill all owners for electric and/or natural gas service charges to all units (even though units may be separately metered), in advance based upon an annual budgeted sum, or in arrears based upon actual billings from the respective utility suppliers. Such billings by the Association shall be deemed to be special assessments to all the units and the Association shall collect the same and account for and pay collections over to the respective suppliers of natural gas and electricity. If such user charges are so billed and collected by the Association in advance, the Association shall adjust the accounts of the owners at least annually, based upon actual use of natural gas and/or electricity by each respective unit and

the limited common elements allocated to such unit, if such use information is obtainable, or based upon each unit's Percentage of Common Expense Responsibility, if such use information is not obtainable. Electricity, telephone and natural gas supplied to or within general common elements within the building shall be metered to the Association and all of the charges for such common gas, telephone and electricity shall be assessed as general common expenses to all of the owners of all units in the Project, allocated among all such owners on the basis of each unit's Percentage of Common Expense Responsibility. Electricity, telephone and natural gas supplied to or within any limited common element in the building may, at the option of the Association, either (i) be connected into a meter of one or more of the condominium units to which use and enjoyment of such limited common element has been assigned, in which event all of the charges for such electricity, gas or telephone shall be payable directly by the owners of the units to which use and enjoyment of such limited common elements has been assigned or by the Association, at its option (in which latter event such charges shall be specially assessed to all units as hereinabove provided), or (ii) be metered to the units to which use and enjoyment of such limited common element has been assigned, allocated among such owners on the basis of the proportion that each unit's vested percentage undivided ownership interest in general common elements appurtenant to such unit bears to the total vested percentage undivided ownership interests in general common elements collectively appurtenant to all units to which use and enjoyment of such limited common element has been assigned.

**8. Assessments for Common Expenses; Lien; Collection of Assessments; Remedies of Association; and Estoppel Certificate of Assessments.**

(a) **Obligation to Pay Assessments.** The Association shall levy and assess the owners for payment of the Common Expenses. The owner of each condominium unit shall pay his pro rata share of the common expenses allocated to such unit, as general assessments or special assessments, such pro rata share being the Percentage of Common Expense Responsibility of such unit. The Percentage of Common Expense Responsibility allocated to each condominium unit described in subparagraph 2(a) hereof shall be the respective vested percentage undivided ownership interest of such unit in the general common elements, as scheduled in Exhibit "B" to this Substituted Condominium Declaration. In the event of the partial termination of the Condominium Project pursuant to paragraphs 10 or 11 of this Substituted Condominium Declaration, then the Percentage of Common Expense Responsibility allocated to each condominium unit remaining after partial termination shall be the Percentage of Common Expense Responsibility of such unit immediately prior to such partial termination times a fraction, the numerator of which is the total number of square feet of interior floor space in all air space units in the Project prior to such partial termination and the denominator of which is the total number of square feet of interior floor space in all air space units in the Project remaining after such partial termination, the resulting product being rounded to two decimal places.

(b) **Liability of Co-Owners.** Each owner is liable, and if a unit is owned at any time by two or more persons or entities in undivided interests pursuant to a form of concurrent co-ownership recognized by Colorado law, then each co-owner of such unit is jointly and severally liable with all other co-owners of such unit, to the Association for payment of all common expenses, general and special assessments, fees (including attorneys' fees), interest and charges levied against or with respect to such unit, and for the performance and observance of all of the duties and responsibilities of an "owner" with respect to the unit.

(c) **Association to Levy Assessments.** The Association is hereby authorized and empowered to fix, determine, levy and collect general and special assessments from the owners (i) to pay for the common expenses, (ii) to pay for special expenses (including, but not limited to, Reconstruction Assessments described in paragraph 10) authorized or permitted by this Substituted Condominium Declaration, (iii) to pay for other special assessments authorized by this Substituted Condominium Declaration or in the Bylaws of the Association, and (iv) to fund and contribute to any reserve deemed appropriate by the Board of Directors, including (without limitation) a capital reserve for repairs, maintenance, replacement and acquisition of Association property and general common elements (herein called the "Capital Reserve Fund for Replacements") and a contingency reserve to meet unanticipated common expenses. Assessments for the Capital Reserve Fund for Replacements shall be made on a regular and periodic basis.

(d) **Procedures for Payment.** The Bylaws of the Association shall establish the procedures by which the general and special assessments shall be made known to and paid by the owners. Such procedures may include the determination and levying of such assessments as a periodic and advance (but not less often than quarter-annual) installment billing of an annual budget (including funding of reserves), in which event the general common expenses shall be deemed to have been severally incurred as of the respective dates of the installment billings. The Association shall commence levy and collection of general assessments not later than 60 days after the first unit is sold and conveyed by Declarant.

(e) **Suit.** An action may be brought by the Association in a court of competent jurisdiction to recover unpaid general and special assessments, late payment charges, and accrued interest from the owner or owners liable for payment thereof, with or without foreclosing the lien of the Association described in subparagraph 8(g) below. In any such action the Association shall also be entitled to recover judgment from such owner or owners for all of the Association's attorney's fees, costs of discovery and court costs incurred in connection with such suit. All of such attorney's fees and costs incurred after delinquency of general or special assessments shall be a special assessment to the unit of the delinquent owner in any event.

(f) **Interest.** Unpaid general and special assessments shall bear interest from and after the date the same are due until paid at the rate of one and a half percent (1½%) per month. The Bylaws of the Association may also empower the Association to levy reasonable late charges against a delinquent owner and such owner's unit for late payment of any general or special assessment.

(g) Lien. All unpaid general assessments for common expenses (including contributions to any reserves), all unpaid special assessments (including, but not limited to, Reconstruction Assessments described in paragraph 10 herein), accrued interest on and any late charges levied with respect to any unpaid general or special assessment, and attorney's fees and costs of discovery and suit incurred in connection with enforcement of any unpaid general or special assessment (whether or not suit is brought), as are levied against a unit and the owner of such unit, shall each and all constitute a lien on such condominium unit, and a lien on and security interest in the furniture, furnishings, appliances, equipment, and fixtures therein, in favor of the Association. Such lien of the Association on the condominium unit itself shall be prior and superior to all other liens, mortgages and encumbrances recorded in the real property records of Routt County, Colorado, after the date of the initial recording of this Substituted Condominium Declaration in the Routt County real property records, EXCEPT for (i) the lien for real property taxes and special assessments imposed against such unit by a governmental entity, and (ii) the lien of the first-lien mortgage of record encumbering such unit at any time, to both of which the said lien of the Association shall at all times be subordinate. The Association's lien for any unpaid sum shall attach to a unit from the date of the initial recording of this Substituted Condominium Declaration in the real property records of Routt County, Colorado, but such lien shall be inchoate until any assessment levied against such unit has become past due. The Association's lien for any unpaid sum shall attach to the furniture, furnishings, appliances, equipment, and fixtures within a unit from the date of the initial recording of this Substituted Condominium Declaration in the real property records of Routt County, Colorado, or from the date any such personalty or fixtures became situated in the unit, whichever date is later, but such lien shall be inchoate until any assessment levied against such unit has become past due. Declarant and each successive owner of an interest in a unit, by acquiring title to such interest, grants and is hereby conclusively deemed to have granted to the Association, as secured party, a security interest in all furniture, furnishings, appliances, equipment and fixtures at any time situated in such unit, to secure payment of all assessments, charges, fees, interest, and other sums at any time due and unpaid to the Association with respect to such owner's interest in such unit. This Substituted Condominium Declaration shall constitute a financing statement when a copy hereof is filed with the Colorado Secretary of State or with the Routt County Clerk and Recorder. Such security interest in favor of the Association shall be governed by the Colorado Uniform Commercial Code and shall, nevertheless and whether or not a financing statement for this security interest has been filed, be junior, inferior and subordinate at all times to a perfected security interest in any of such furniture, furnishings, appliances, equipment, and fixtures to secure purchase-money financing thereof or in favor of the first lienor of such unit, as secured party. The lien of the Association against a unit may be evidenced by a notice thereof executed by the Association or its managing agent and recorded in the real property records of Routt County, setting forth therein (i) the amount of the unpaid sums (itemized showing general and special assessments, interest, fees and late charges), (ii) the name of the owner or reputed owner and the legal description of the condominium unit against which such lien is asserted, and (iii) a statement that such lien extends to reasonable attorney's fees and costs of the Association incurred in enforcing such lien. Failure of the Association to record any such notice in the Routt County property records shall not, however, defeat such lien of the Association nor affect its priority as above provided.

(h) Foreclosure. The Association's lien against a unit as described in subparagraph 8(g) above may be foreclosed by the Association in like manner as foreclosure of a mortgage on real property under Colorado law, and in any such foreclosure the Association shall recover judgment against the owner of such unit for all attorney's fees and costs of discovery and suit incurred by the Association. The Association shall be entitled to purchase the condominium unit at the foreclosure sale, and thereafter to acquire, hold, lease, mortgage or convey the same. The Declarant does hereby waive, and each owner, by accepting a deed to an interest in a unit, shall conclusively be deemed to have waived, the homestead exemption of Declarant or such owner with respect to the liability of such unit at any time for the lien securing payment of unpaid general and special assessments, interest, fees and late charges as described in subparagraph 8(g) above. The Association's lien and security interest in all furniture, furnishings, appliances, equipment, and fixtures in a unit may be foreclosed by the Association in the manner provided in the Colorado Uniform Commercial Code.

(i) Receiver. If any general or special assessment of the Association levied or imposed against a condominium unit, or any charges, interest or other sum due to the Association, is not paid by the owner thereof when due, then the Association shall at once become entitled to the possession, occupancy and use of such unit and all furniture, furnishings, appliances, equipment, and fixtures therein, and to all of the rents and income therefrom, from and after the date such assessments and sums became delinquent until such assessments, and all interest, late payment charges, fees and costs, are paid in full or until the end of the periods of redemption from sale on foreclosure of the Association's liens, whichever first occurs. Such possession shall at once be delivered to the Association on request, and in the event of refusal, the delivery of such possession may be enforced by the Association by any appropriate civil suit or proceeding, and the Association shall be entitled to a Receiver for said condominium unit and for all furniture, furnishings, appliances, equipment, and fixtures situated therein, and of the rents, issues and profits therefrom, after such delinquency, including the time covered by foreclosure proceedings and the period of redemption, if any there be, and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of the then owner of said condominium unit and personal property and without regard to the value thereof, and such Receiver may be appointed by the Routt County District Court upon ex parte application and without notice -- notice being hereby expressly waived by all owners -- and all rents, issues and profits, income, and revenue therefrom shall be applied by such Receiver first to the expenses of such Receivership (including a reasonable Receiver's fee and any attorney's fees incurred by the Receiver), then to the payment of all regular and special assessments of the Association levied and coming due during the period of the receivership, then to the indebtedness secured by the first-lien mortgage encumbering such unit, then to interest, charges, fees, and assessments due to the Association with respect to such unit and unpaid as of the commencement of such receivership, and the balance, if any, to be applied according to the law and the orders and directions of the Court. All owners, tenants, occupants, and lienors of a unit shall be deemed to have confessed the jurisdiction of the Routt County District Court to appoint a Receiver for the unit and the furniture, furnishings, appliances, equipment, and fixtures therein. All provisions of this subparagraph 8(i) are subject and subordinate to the exercise of lawful rights

to a receivership by the first lienor of the first-lien mortgage encumbering such unit, and to lawful exercise by such first lienor of foreclosure of its security interest, if any, in the furniture, furnishings, appliances, equipment, and fixtures situated in such unit.

(j) Conditional Assignment of Rents. Each owner hereby conditionally assigns to the Association as additional security for unpaid general and special assessments, late payment charges, interest, fees and costs, all rights in and to any rental management contract affecting the owner's unit and all net rents and net income otherwise payable to the owner for occupancy of his unit for and during all periods any assessments or other sums remain unpaid to the Association after the same were due, and during such periods the rental management agent for the unit of the delinquent owner shall forthwith pay over to the Association upon its written demand all rents and income otherwise payable to the delinquent owner, but not to exceed the amounts due and unpaid to the Association. All net rentals and net income received by the Association pursuant to this subparagraph 8(j) shall be paid and applied as follows: first, to the expenses incurred by the Association in obtaining such rentals and income (including attorneys' fees incurred); second, to payment to the Association of late payment charges and attorney's fees owed to it by the owner; third, to payment to the Association of the accrued interest on all unpaid assessments; fourth, to payment to the Association of the delinquent general and special assessments levied against such unit, in the chronological order such assessments became due; and lastly, to payment on the first-lien mortgage encumbering such unit, if any, and if none, to payment to the delinquent owner. All provisions of this subparagraph 8(j) are subject and subordinate to the exercise of lawful rights to assignment of rents to the first lienor of the first-lien mortgage encumbering such unit. Any rental management agreement respecting any unit shall be subject and subordinate to the exercise by the Association of its rights under this subparagraph 8(j).

(k) No Exemption. No owner shall exempt himself from liability for payment of general or special assessments by waiver of the use or enjoyment of any of the general common elements or property of the Association, by abandonment of his condominium unit, or by operation of subparagraphs 8(e) or 8(h) through 8(j) above.

(l) Liability of Transferee. In case of sale or other voluntary transfer of a condominium unit or an interest therein with respect to which general or special assessments, interest, late payment charges, costs or fees are accrued and unpaid as of the date of transfer, the purchaser or other transferee shall be jointly and severally liable with the seller or transferor for such unpaid sums. Therefore, if any lienor (including a first lienor) of a unit obtains title to such unit by a voluntary deed in lieu of foreclosure, then such lienor shall be jointly and severally liable for all unpaid general and special assessments, late payment charges, interest, costs, and fees accrued against such unit as of the date of transfer, and such lienor shall be deemed an owner for all purposes from and after such transfer. However, if a first lienor obtains title to a unit by sheriff's deed or public trustee's deed upon foreclosure of the first-lien mortgage against a unit, then such first lienor is not liable for any unpaid assessments, charges, interest, costs or fees which accrued against such unit prior to the vesting and transfer of title in such first lienor.

(m) Estoppel Certificate. Within 10 days after written request of any owner, mortgagee, prospective mortgagee, purchaser or other prospective transferee of a condominium unit, or of any title insurer, the Association shall issue a written statement to the requesting party setting forth with respect to such unit the amount of any unpaid general and special assessments, the dates on which such assessments respectively became or shall become due, the amount of any credits to the account of such unit, and the amounts of any interest, late payment charges, attorneys' fees or costs due with respect to such unit. Such statement, for which a reasonable fee may be charged, is binding upon the Association in favor of the person or entity who requested such statement and who has relied thereon in good faith, and when such request has been made by a title insurer, shall be binding upon the Association also in favor of the person or entity whose interest in the unit was insured by such insurer. If the Association fails to issue and mail such statement to the person or entity who made written request therefor within 10 days after actual receipt by the Association of such written request, all unpaid general and special assessments, charges, fees, interest and costs which became due prior to the date such request was actually received by the Association shall be subordinated to the lien or other interest in the unit of the person or entity requesting such statement, and when such request has been made by a title insurer, shall be subordinated to the lien or other interest in the unit of the person or entity whose interest in the unit was insured by such insurer. In addition, a first lienor, and the insurer or guarantor of a first-lien mortgage who has sent a prior written request to the Association, shall receive timely written notification from the Association of (i) any condemnation or casualty loss that affects either a material portion of the Project or the unit securing the first-lien mortgage, (ii) any 60-day delinquency in the payment of assessments or charges owed by the owner of the unit encumbered by the first-lien mortgage, (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (iv) any proposed action that requires the consent of a specified percentage of first lienors. The Association shall have current copies of this Substituted Condominium Declaration and the Amended and Restated Articles of Incorporation, Bylaws, rules and regulations of the Association, and the books, records of receipts and expenditures, and financial statements of the Association available for inspection by any owner and any holder, insurer or guarantor of a first-lien mortgage on a unit during normal weekday business hours. Audited financial statements of the Association shall not be required, but any holder, insurer, or guarantor of a first-lien mortgage shall be allowed to have an audited financial statement of the Association's affairs prepared at the sole expense of such holder, insurer, or guarantor.

(n) Lienor Right to Pay. Any first lienor of a condominium unit may (but shall not be required to) pay any unpaid general or special assessments, accrued interest, late payment charges, fees or costs with respect to such unit, and upon such payment such first lienor shall have a lien on such condominium unit for the amount so paid of the same rank as the lien described in subparagraph 8(g) above and shall be subrogated to the rights and remedies of the Association to collect such amount.

9. Insurance.

(a) Policies to be Maintained. The Board of Directors of the Association shall, on behalf of the owners:

(1) keep the building (including all of the air space units and all fixtures therein, but not including furniture, furnishings or other personal property owned and supplied or installed by a unit owner except to the extent such personal property is financed by the first lienor of the unit) and all structures on the general common elements, all structures situated on real property owned by the Association, and all personal property owned by the Association, insured at all times against loss or damage by fire, with extended coverage "all risks" endorsement, in an amount not less than 100% of the maximum insurable value thereof (being 100% of the current replacement cost excluding land and excavations);

(2) provide and keep in force, for the protection of the Association, its officers and directors, and all the owners and first lienors, general public liability insurance against claims for bodily injury or death or property damage occurring upon or in the general common elements or on property owned by the Association, in limits of not less than \$1,000,000.00 per occurrence and not less than \$1,000,000.00 aggregate for bodily injury or death to persons or damage to property, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried;

(3) carry and maintain fidelity bond or insurance coverage against dishonest acts on the part of directors, managers, managing agent, trustees, employees or volunteers of the Association responsible for handling funds belonging to or administered by the Association, such bond or insurance coverage to be in the name of the Association and in an amount not less than the greater of (i) one and one-half times the Association's estimated annual operating expenses and contributions to reserves, or (ii) the maximum funds in the custody of the Association or managing agent of the Association at any time during the term of such bond or insurance coverage. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers; and

(4) carry such additional endorsements to the above policies as are required from time to time by FNMA, VA, FHA and FHLMC guidelines or requirements, if any unit in the Project is encumbered by a first-lien mortgage owned or guaranteed by FNMA, VA, FHA or FHLMC, and also carry insurance in such amounts as the Board of Directors may consider necessary or advisable against such other insurable hazards as may from time to time be commonly insured against in the case of similar condominium property in similar locations elsewhere.

(b) Owner of Policies. All insurance required to be carried under this paragraph 9 (including the fidelity bond or insurance) shall be carried in the name of the Association and in favor of the Association, the owners and all first lienors, as named and identified in the public records or in the records

maintained by the Association pursuant to this Substituted Condominium Declaration or the Bylaws of the Association, and as the respective interests of such owners and first lienors may appear, the respective interest of each owner of a condominium unit being the vested percentage undivided ownership interest in the general common elements appurtenant to such unit as set forth in Exhibit "B" to this Substituted Condominium Declaration. Each such bond and insurance policy shall include an endorsement that shall require at least 10 days' advance notice in writing from the insurer to the Association and to each first lienor of each unit in the Project prior to the effective date of any cancellation, change, modification or amendment to such policy.

(c) Mortgagee Clause. Each policy of casualty insurance shall contain a standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear. All policies of casualty insurance carried by the Association shall provide that loss payments shall be adjusted with and collected by the Association, as attorney-in-fact for the owners and for the use and benefit of mortgagees. The Association shall hold and apply the loss payments from such insurance pursuant to the provisions of paragraph 10 of this Substituted Condominium Declaration.

(d) Endorsements. The Board of Directors shall make every reasonable effort to obtain policies of casualty insurance providing or containing the following provisions or endorsements: (i) the insurance coverage shall not be brought into contribution with insurance purchased by individual unit owners; (ii) each unit owner may obtain additional insurance covering his property interests at such owner's own expense; (iii) the insurance coverage cannot be canceled, invalidated, reduced or suspended because of the conduct of any one or more unit owners or their respective lessees, employees, agents, contractors, invitees and guests; (iv) the insurance coverage cannot be cancelled, invalidated or suspended without at least 20 days' prior written notice to the Association, and if any proposed cancellation, invalidity or suspension is due to the conduct of any officer or employee of the Association or its managing agent, such insurance coverage cannot be so cancelled, invalidated or suspended without prior written demand that the Board of Directors cure the defect and then only if the defect is not cured within 20 days after demand; and (v) the insurer waives its right of subrogation as to any claims against each unit owner. Evidence or certificate of continuing insurance shall be delivered by the Association to any owner or any first lienor promptly upon written request, showing such owner's or such lienor's interests thereunder.

(e) Standards for Insurers. So long as Best's Insurance Reports is published, each hazard insurance policy carried by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of Class B/VI or better, or by an insurance carrier which has a current rating by Best's Insurance Reports of Class V, provided such carrier has a general policy holder's rating of at least A. Each carrier must be specifically authorized by law to transact business within Colorado. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, any owner or any first lienor; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of

directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent any first lienor or the Association or any owner from collecting insurance proceeds.

(f) Insurable Value. The maximum insurable value of the building and each structure (which shall indicate the maximum insurable value of each condominium unit contained in such building), without deduction for depreciation, shall be based upon replacement cost and shall be determined by the Association prior to obtaining any policy of casualty insurance.

(g) Owners' Policies. Each owner shall be responsible to obtain and pay premiums for all insurance covering loss or damage to personal property within his air space unit, and is also responsible to obtain and pay premiums for all liability insurance covering injury to persons, death or damage to personal property occurring within his air space unit. Any such policy shall contain waivers of subrogation against the Association and shall be so written that the liability of the carriers issuing insurance for the Association shall not be affected or diminished thereby. Each unit owner shall be liable for any increase in premiums or coverage for insurance maintained by the Association as a result of improvements or fixtures installed or made by an owner within his unit, and each owner shall promptly notify the Association in writing of any such improvements or fixtures which may cause or require any such increase in premiums or coverage. Each owner shall bear the sole risk of loss for all improvements and fixtures installed or made to his unit which were not the subject of written notice to the Board of Directors. Any owner who obtains casualty insurance covering his unit, other than for only personal property at any time situated within such unit, shall file a copy of such policy with the Association within thirty (30) days after obtaining such insurance coverage.

(h) Premiums. Premiums on all insurance policies carried pursuant to this paragraph 9 by the Association, specifically excluding those carried pursuant to paragraph 9(g), shall be common expenses of all of the owners.

10. Association as Attorney-in-Fact; Destruction, Damage or Obsolescence.

(a) Association as Attorney-in-Fact. This Substituted Condominium Declaration does hereby make mandatory the irrevocable appointment by all of the owners of an attorney-in-fact to deal with the Project and any part thereof and interests therein and to represent (without necessity of any prior approval of the owners except as expressly otherwise provided in this Substituted Condominium Declaration) the ownership, rights, and interests of the owners (i) with respect to any grant and conveyance of any interest in the general common elements, including (but not limited to) grants and conveyances of public or private easements for the installation, maintenance, repair, inspection, and replacement of public or private utilities and/or for access, roadway, or street purposes, (ii) in the event of any destruction of, damage to, obsolescence in, or condemnation of all or any part of the Project, and (iii) in commencing, pursuing, or defending any civil suit, in equity or in law, on behalf of such

owners and arising out of any grant or conveyance of an interest in the general common elements or arising out of any destruction of, damage to, obsolescence in, or condemnation of all or any part of the Project or any civil suit against the Declarant or any architect, designer, contractor, subcontractor, materials supplier, inspector, or builder of any part of the Project, and for such described purposes all owners irrevocably appoint and constitute the Association as their attorney-in-fact, and all owners are deemed hereby to have irrevocably appointed and constituted the Association as their attorney-in-fact, in their name, place, signatory, and stead and with full power of substitution and to appoint subagents. Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner, grantor, sheriff or public trustee, shall constitute the irrevocable appointment of the Association by the grantee as his attorney-in-fact as herein provided. This power of attorney shall include (but not be deemed limited to) power and authority of the Association:

(1) to cause and accomplish the repair, replacement, renovation, reconstruction and improvement, including administrative, engineering, architectural, surveying, accounting, and legal services necessary or proper for the accomplishment thereof (all of which are herein called "Reconstruction" or "to Reconstruct"), of the portion of the Project which has been destroyed, damaged, or has become obsolete, or the remainder of the Project after a portion thereof has been condemned;

(2) to represent the interests of owners in any suit or proceeding in eminent domain or relating to or arising out of any damage to, destruction of, obsolescence in, or condemnation of the Project or any portion thereof, including (but not limited to) the power and authority to compromise, settle, or waive any claim or defense of an owner in any suit or proceeding; provided, however, that (i) if an air space unit is taken in condemnation, the Association shall have no authority to consent to or approve a Condemnation Award for such unit which is less than the sums required to release and discharge the first-lien mortgage encumbering such unit, without the prior written consent of the owner and first lienor of such unit, and (ii) if an air space unit is damaged or destroyed, the Association shall have no authority to compromise or agree with a casualty insurer to payment of insurance proceeds less than the maximum amount recoverable under the policy of insurance, without the prior written consent of the owner and first lienor of such unit;

(3) to grant, bargain, sell and convey all or any units, general and limited common elements, and real property of the Association pursuant to the specific provisions of paragraphs 10 and 11 of this Substituted Condominium Declaration; and

(4) to make, execute and deliver, by its President and Secretary or Assistant Secretary, any contract, deed, pleading, settlement, stipulation, agreement, bill of sale, or other instrument with respect to the interest of any owner which is within the scope of and is necessary to or proper for the exercise of the agency herein granted to the Association.

In the event that the Association is dissolved, a meeting of the owners shall be held within thirty (30) days after a majority of the surviving members of the last board of directors of the Association have actual notice of such dissolution. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence or condemnation, shall be appointed by the affirmative vote of at least two-thirds of all of the votes of all members owning units then subject to this Substituted Condominium Declaration, provided that such appointment is thereafter ratified in writing by two-thirds of the first lienors of the condominium units in the Project.

(b) Reconstruction in General. Reconstruction of the Project or the building or any part thereof, as such term is used in paragraphs 10 and 11 herein, shall be for the purpose of restoring the portion of the Project which has been damaged or destroyed or has become obsolete, or the remainder of the Project after a portion thereof has been condemned, to substantially the same condition in which such portion existed prior to the damage, destruction, obsolescence or condemnation, including restoration of landscaping and other improvements adjacent to the building, with each condominium unit and the building having substantially the same vertical and horizontal boundaries and locations after such Reconstruction as before. Reconstruction shall be in substantial conformance with the Project's original architectural design and land plan to the extent then reasonably and economically feasible. The proceeds of all fire and extended coverage casualty insurance carried by the Association shall be available to the Association for the purpose of paying for such Reconstruction, unless otherwise expressly provided in this paragraph 10. The term "damage" shall include injury to any general common elements or building components arising from (i) defective, improper, or negligent design or construction, and (ii) any casualty or act of God.

(c) Reconstruction Without Assessment. In the event of damage or destruction to any portion of the Condominium Project from any cause or casualty, and if the casualty insurance proceeds paid or payable to the Association, plus funds available in the Capital Reserve Fund for Replacements, are reasonably estimated by the Association's Board of Directors prior to commencement of Reconstruction to be sufficient to pay all costs and expenses of Reconstruction, then the Association, as attorney-in-fact, shall promptly Reconstruct or cause to be Reconstructed such damaged or destroyed portion of the Project. General and special assessments shall not abate to any owner during the period of insurance adjustment and Reconstruction.

(d) Reconstruction, Partial Damage. If:

(1) the insurance proceeds paid or payable to the Association, plus funds available in the Capital Reserve Fund for Replacements, are in fact insufficient to pay all costs and expenses of Reconstruction of the damaged or destroyed portion of the Project, or

(2) the Association's Board of Directors reasonably estimates prior to commencement of Reconstruction that such insurance proceeds, plus funds available in the Capital Reserve Fund for Replacements, will be insufficient to pay all costs and expenses of such Reconstruction,

and, further, if the damaged or destroyed portion of the Project:

(3) is situated on real property owned by the Association, or

(4) is the building, but the damage or destruction thereto does not exceed seventy percent (70%) of the total replacement cost of such building, not including land or excavations or foundations,

then the Association, as attorney-in-fact, shall promptly Reconstruct or cause to be Reconstructed such damaged or destroyed portion of the Project, using the proceeds of insurance, the available funds in the Capital Reserve Fund for Replacements, and the proceeds of a special assessment (a "Reconstruction Assessment") to be made against all of the owners of all units in the Project, allocated among all such owners on the basis of each unit's Percentage of Common Expense Responsibility. The Reconstruction Assessment shall be the amount necessary, after application of insurance proceeds received by the Association and funds available in the capital reserve of the Association for repairs, maintenance, replacement, and acquisition of Association property and general common elements, to pay in full all of the costs and expenses of Reconstruction. General and special assessments shall not abate to any owner during the period of insurance adjustment and Reconstruction.

(e) Reconstruction, Total Damage.

(1) If:

(i) the insurance proceeds paid or payable to the Association, plus funds available in the Capital Reserve Fund for Replacements, are in fact insufficient to pay all costs and expenses of Reconstruction of the damaged or destroyed portion of the Project, or

(ii) the Association's Board of Directors reasonably estimates prior to commencement of Reconstruction that such insurance proceeds, plus funds available in the Capital Reserve Fund for Replacements, will be insufficient to pay all costs and expenses of such Reconstruction,

and, further, if the damaged or destroyed portion of the Project is the building, and the damage or destruction thereto exceeds seventy percent (70%) of the total replacement cost of such building, not including land or excavations or foundations, then unless the owners of units in such damaged or destroyed building determine not to Reconstruct but to sell and convey such building as provided below in subparagraph 10(a)(2), the Association, as attorney-in-fact, shall promptly Reconstruct or cause to be Reconstructed such damaged or destroyed building, using the proceeds of insurance, the funds available in the Capital Reserve Fund for Replacements, and the proceeds of a special assessment (a "Reconstruction Assessment") to be made against all of the owners of all units in the Project, allocated among all such owners on the basis of each unit's Percentage of Common Expense Responsibility. The Reconstruction Assessment shall be the amount necessary, after application of insurance proceeds received by the Association and funds available in the capital reserve of the Association for repairs, maintenance, replacement, and acquisition of Association property and general common elements, to pay in full all of the costs and expenses of Reconstruction. General and special assessments shall not abate to any owner during the period of insurance adjustment and Reconstruction.

(2) If the damaged or destroyed portion of the Project is the building, and if the damage or destruction thereto exceeds seventy percent (70%) of the total replacement cost of such building, not including land or excavations or foundations, then the owners of eighty percent (80%) or more of the condominium units in such building and all of the first lienors of such units may agree not to reconstruct but to terminate such building and certain adjacent general and limited common elements from the Project and to sell and convey such building and such general and limited common elements free of this Substituted Condominium Declaration, the Map, and the Amended and Restated Articles of Incorporation and Bylaws of the Association. Such agreement (herein called a "Termination Agreement") must be in a writing which (i) describes such building and the damage or destruction in reasonable detail, (ii) sets forth the exact surveyed legal description of the land (to be not less than the property described on Exhibit "A" hereto) and the general common elements to be terminated, sold and conveyed with such building, (iii) has been executed and acknowledged by the owners of at least eighty percent (80%) of the units in such building and by all of the first lienors of units in such building, and (iv) is delivered to the Association. The Board of Directors of the Association shall either approve or deny such Termination Agreement at a public meeting of such Board held within 60 days after receipt of such Termination Agreement. Notice of the time, date and place of such meeting shall be given pursuant to the Bylaws of the Association as if such meeting were a special meeting of the membership of the Association. Failure of the Board of Directors to hold such a meeting or, if held, to either approve or deny such Termination Agreement shall conclusively be deemed approval thereof by the Board of Directors. Approval of such Termination Agreement by the Board of Directors shall not unreasonably be withheld. The reasons for denial of such Termination Agreement shall be set forth specifically in the minutes of the meeting of the Board of Directors. If the Association receives such a Termination Agreement within 60 days after damage or destruction to a building, and if the Association approves such Termination Agreement as above provided, then the Association shall not reconstruct the damaged or destroyed building nor spend casualty insurance proceeds received as a result of such damage or destruction, but shall proceed to sell and convey the terminated real property in accordance with subparagraph 10(i) below.

(f) Reconstruction Assessment. Prior to commencement of Reconstruction under subparagraphs 10(d) or 10(e) above, the Association may estimate in good faith the anticipated cost of Reconstruction, after deduction of expected casualty insurance proceeds and deduction of funds available in the Capital Reserve Fund for Replacements, and may specially assess such estimated net cost as an advance installment of the Reconstruction Assessment to and among the owners liable therefor; provided, however, that after completion of such Reconstruction the Association shall render a final accounting of the actual net cost to the owners liable therefor, and shall include any assessment of a final installment of the Reconstruction Assessment or any credit to the accounts of the owners for overpayment, as may be applicable. The Association shall have full authority, right and power, as attorney-in-fact, to reconstruct the damaged or destroyed portion of the Project using for such purpose all of the insurance proceeds, funds available in the Capital Reserve Fund for Replacements, and receipts from the Reconstruction Assessment, notwithstanding the failure of any owner to pay such owner's allocable share of the Reconstruction Assessment.

(g) Reconstruction Plan. The owners of sixty-seven percent (67%) or more of the condominium units in the building may agree that all or part of such building is obsolete and may propose to the Association a written plan for Reconstruction of all or part of such building (herein called a "Reconstruction Plan"). The Reconstruction Plan must describe the proposed Reconstruction, the maximum estimated cost thereof (based upon contractor's, engineer's or architect's estimates and including a 25% contingency factor), and the percentage allocation of the Reconstruction Assessment among the units in such building, and must be executed and acknowledged by the owners of at least sixty-seven percent (67%) of the units in such building. The Board of Directors of the Association shall either approve or deny such Reconstruction Plan at a public meeting of such Board which must be held within 30 days of receipt of such Plan. Notice of the time, date and place of such meeting shall be given pursuant to the Bylaws of the Association as if such meeting were a special meeting of the membership of the Association. Failure of the Board of Directors to hold such a meeting or, if held, to either approve or deny such Reconstruction Plan shall conclusively be deemed approval thereof by the Board of Directors. Approval of such Reconstruction Plan by the Board of Directors shall not unreasonably be withheld. The reasons for denial of such Reconstruction Plan shall be set forth specifically in the minutes of the meeting of the Board of Directors. If a Reconstruction Plan is so proposed in writing to and approved by the Board of Directors, then thereafter and prior to commencement of such Reconstruction of such building, the Association shall assess the maximum estimated cost set forth in the Reconstruction Plan to all of the owners of units in the obsolete building (such assessment being herein called a "Reconstruction Assessment"). The Reconstruction Assessment made pursuant to a Reconstruction Plan shall be allocated in accordance with the percentage allocation among the units in such building as was specified in the Reconstruction Plan; provided, however, that in no event shall the allocation to a unit whose owner has not executed the Reconstruction Plan be greater than the proportion that the vested percentage undivided ownership interest in the general common elements appurtenant to such owner's unit in such building bears to the total vested percentage undivided ownership interests in the general common elements appurtenant collectively to all units in such building. The costs and expense of Reconstruction of such building shall not exceed the maximum estimated cost set forth in the Reconstruction Plan unless such Plan be amended in the same manner as originally approved. The Association shall have full authority, right and power, as attorney-in-fact, to reconstruct the obsolete building pursuant to the Reconstruction Plan using receipts from the Reconstruction Assessment for such purpose, notwithstanding the failure of any owner to pay such owner's allocable share of the Reconstruction Assessment.

(h) Obsolescence. The owners of eighty percent (80%) or more of the condominium units in the building and all of the first lienors of units in such building may agree that such building is obsolete and should be terminated from the Project and to sell and convey such building and such general and limited common elements free of this Substituted Condominium Declaration, the Map, and the Amended and Restated Articles of Incorporation and Bylaws of the Association. Such agreement (herein called a "Termination Agreement") must be in a writing which (i) describes such building and the obsolescence in reasonable detail, (ii) sets forth the exact surveyed legal description of the land (to be not less than the property described on Exhibit "A" hereto) and the

general common elements to be terminated, sold and conveyed with such building, (iii) has been executed and acknowledged by the owners of at least eighty percent (80%) of the units in such building and by all of the first lienors of units in such building, and (iv) is delivered to the Association. The Board of Directors of the Association shall either approve or deny such Termination Agreement at a public meeting of such Board held within 60 days after receipt of such Termination Agreement. Notice of the time, date and place of such meeting shall be given pursuant to the Bylaws of the Association as if such meeting were a special meeting of the membership of the Association. Failure of the Board of Directors to hold such a meeting or, if held, to either approve or deny such Termination Agreement shall conclusively be deemed approval thereof by the Board of Directors. Approval of such Termination Agreement by the Board of Directors shall not unreasonably be withheld. The reasons for denial of such Termination Agreement shall be set forth specifically in the minutes of the meeting of the Board of Directors.

(i) Termination Agreement. If a properly executed Termination Agreement as described in subparagraph 10(e)(2) or subparagraph 10(h) above is presented to and, after public meeting, approved by the Board of Directors, then the Association, by its President and Secretary or Assistant Secretary, shall promptly execute, approve and record such Termination Agreement in the Routt County property records. Upon recording of such a Termination Agreement, all right, power, interest and authority of the owners of units in the building described in such Termination Agreement to sell, grant, convey, lien, mortgage or encumber such units shall irrevocably and exclusively be vested in the Association, as attorney-in-fact for such owners, and any deed, instrument, mortgage or lien executed by any such owner recorded after the time of recording of such Termination Agreement shall be null and void and of no force or effect. After recording of such Termination Agreement, the entire Condominium Project shall be sold and conveyed with due diligence by the Association, for itself and as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Substituted Condominium Declaration, the Map, and the Amended and Restated Articles of Incorporation and Bylaws of the Association. Upon the recording in the real property records of Routt County of the deed or deeds to the entirety of the real property then subject to this Substituted Condominium Declaration pursuant to the recorded Termination Agreement, the condominium ownership of all of the Project shall conclusively be deemed terminated, all real and personal property sold and conveyed shall be free from and unencumbered by any document or instrument relating to the Condominium Project or any lien of the Association, all liens of the Association under paragraph 8 of this Substituted Condominium Declaration (but not the underlying personal obligations of the delinquent owners) shall be deemed cancelled and terminated, and this Substituted Condominium Declaration and all rights, reservations and interests hereunder (including all rights, interests and easements in or reserved by the Declarant) shall wholly terminate and expire. Accounts receivable of the Association from the owners shall not be deemed cancelled, discharged or terminated but shall remain the separate property of the Association. The proceeds from such sale and conveyance, and all casualty insurance proceeds collected by the Association as a result of any damage or destruction to such building, shall be allocated by the Association only among the owners of units in the building so sold and conveyed, such allocation to be made on the basis

that the proportion that each unit's vested percentage undivided ownership interest in general common elements appurtenant to such unit bears to the total vested percentage undivided ownership interests in general common elements collectively appurtenant to all units in such building. Such proceeds shall be deposited and disbursed in accordance with the provisions of subparagraph 10(j) below. The proportionate share of the funds in the Capital Reserve Fund for Replacements and in the contingency reserve of the Association appurtenant to the units in the building so sold and conveyed, as of the date of conveyance, shall also be included in such deposit and disbursement. The purchase price of any sale and conveyance by the Association made pursuant to a Termination Agreement, plus the proceeds of casualty insurance received by the Association as a result of any damage or destruction to the conveyed property, shall be not less than the total sum required at closing of such sale and conveyance to pay and discharge all of the amounts described in items (1) through (4) of subparagraph 10(j) below for all of the units in the building so sold and conveyed, computed as of the date of closing of such sale and conveyance. Otherwise, however, such purchase price shall be determined solely by the Board of Directors of the Association, acting in good faith, and the Board shall not be required to meet any particular or desired price specified in the Termination Agreement. Terms of payment of sale of any property pursuant to a Termination Agreement shall, however, be cash in the amount of the purchase price. General and special assessments of the Association shall not abate to any owner after the submittal of a Termination Agreement to the Board of Directors but prior to sale and conveyance of property pursuant thereto.

(j) Disbursement of Proceeds. The proceeds from sale and conveyance of property pursuant to a Termination Agreement, and all casualty insurance proceeds collected by the Association as a result of damage or destruction to the building described in a Termination Agreement, shall be divided by the Association at closing of such sale and conveyance among the owners of units in the building, in the proportion that each unit's vested percentage undivided ownership interest in general common elements appurtenant to such unit bears to the total vested percentage undivided ownership interests in general common elements collectively appurtenant to all units in such building before closing of sale thereof, and shall be deposited in separate escrow accounts of the Association or of a title insurance company in a banking or savings and loan institution, each such account representing a separate condominium unit. Each such account shall be in the name of the Association or title insurance company but shall be further identified by a condominium unit designation. The Association, as attorney-in-fact, or the title insurance company, as escrow agent for the Association, shall disburse the total funds in each such account, without contribution from one account to another, for the following purposes and in the following order of priority until such funds are exhausted:

(1) For payment of all sums required to release and discharge the indebtedness secured or formerly secured by the first-lien mortgage encumbering the unit designated on such account;

(2) For payment of unpaid real property taxes and special assessments levied against such unit by governmental entities, together with any accrued interest and penalties thereon;

(3) For payment of unpaid interest, late payment charges, fees and costs of the Association due from the owner of such unit, then for payment of unpaid special assessments of the Association against such unit, and then for payment of unpaid general assessments of the Association against such unit, all such payments in any such category to be applied in the chronological order such sums became due;

(4) For payment of all sums required to release and discharge the junior liens and mortgages encumbering the unit designated on such account, in the order of and to the extent of their respective priorities; and

(5) The balance remaining, if any, shall be paid to the owner of the condominium unit designated on such account.

(k) Collection of Reconstruction Assessment. Every Reconstruction Assessment is a "special assessment" of the Association within the meaning of such term in this Substituted Condominium Declaration and in the Amended and Restated Articles and Bylaws of the Association, and each owner shall be personally liable for the proportion thereof allocated and assessed to such owner's unit. Until paid, every Reconstruction Assessment shall be a lien on the condominium unit of each owner against whom it is assessed, which lien shall be of the nature and priority, and may be enforced and collected, as described in paragraph 8 of this Substituted Condominium Declaration. If the damage or destruction to a portion of the Project is proximately caused by the willful and wanton act or gross negligence of an owner (the "negligent owner"), then the Association, as attorney-in-fact for all other owners, is subrogated to the claims of such other owners and may recover against such negligent owner the entirety of the Reconstruction Assessment made to all owners, which entire Reconstruction Assessment shall be a separate special assessment against and a lien upon such negligent owner's unit.

#### 11. Condemnation.

(a) Condemnation. If all or any portion of the Condominium Project shall be taken or condemned, or threatened to be taken or condemned, by any public authority, or if the Board or Directors of the Association desires to sell and convey all or any portion of the Association's property to a public authority in lieu or in avoidance of condemnation, the provisions of this paragraph 11 shall apply. All of the owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, with full power of substitution or to appoint subagents, for the purpose of dealing with the Project and to represent the interests of the owners in the event of the condemnation of all or any part of the Project, pursuant to and including (but not limited to) the powers and authority granted in subparagraph 10(a) of this Substituted Condominium Declaration.

(b) Payment to Association. All compensation, awards, damages to the remainder and other proceeds from condemnation, and all proceeds to the

Association from sale in lieu of or in avoidance of condemnation (all of which is hereafter called the "Condemnation Award"), shall be payable to the Association, as attorney-in-fact for the owners of units affected by such condemnation or sale and conveyance.

(c) Total Taking. In the event that the entire Project is taken or condemned, the condominium ownership of the Project pursuant to this Substituted Condominium Declaration shall terminate upon consummation of such condemnation. The entire Condemnation Award shall be apportioned among the owners on the basis of the Percentage of Common Expense Responsibility of each owner's unit, provided, however, that if a standard different from the value of the property as a whole is employed as the measure of 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. After receipt of the Condemnation Award, the Association shall as soon as practicable determine the shares thereof allocable to each unit and shall deposit such shares into separate accounts and disburse the same as soon as practicable in the same manner as is provided in subparagraph 10(j) herein.

(d) Power of Sale. In the event that any public authority threatens or states its intent to condemn real property owned by the Association, or shall commence proceedings in eminent domain to acquire any real property owned by the Association, then the Association shall have the power and authority to sell and convey all or any part of the property owned by the Association to such public authority in lieu or in avoidance of condemnation, free and clear of the provisions contained in this Substituted Condominium Declaration, the Map, and the Amended and Restated Articles of Incorporation and Bylaws of the Association. Upon the recording in the real property records of Routt County of the deed or deeds to such real property, the conveyed property shall conclusively be deemed terminated from the Condominium Project and shall be free from and unencumbered by any document or instrument relating to the Condominium Project or any lien of the Association, and all rights, reservations and interests in and under this Substituted Condominium Declaration (including all rights, interests and easements in or reserved by the Declarant) on, in, encumbering or related to such conveyed real property shall wholly terminate and expire.

(e) Association as Attorney-in-Fact. If any public authority shall commence proceedings in eminent domain to condemn all or any part of the Condominium Project and shall record in the Routt County real property records a lis pendens which gives constructive notice of the pendency of such proceeding, then the Association, as attorney-in-fact for the owners of units affected thereby, shall represent the interests of such owners in such proceeding pursuant to the authority granted under subparagraph 11(a) herein.

(f) Partial Taking. If less than all of the Project is taken or condemned, then as soon as is practicable after the portion of the Project is taken or condemned, or is sold or conveyed by the Association in lieu thereof, and the Condemnation Award has been obtained by the Association, the Association shall reasonably and in good faith allocate the Condemnation Award and apportion the amounts so allocated among the owners as follows:

(1) the total amount allocated to the taking of or injury to property owned by the Association shall be apportioned among all of the owners in the Project on the basis of each condominium unit owner's Percentage of Common Expense Responsibility;

(2) the compensation allocated to the taking of general common elements within or appurtenant to the building, the compensation allocated to severance damages, and the compensation allocated to damages to the remainder of the building or to the remainder of the general common elements appurtenant to the building, shall be apportioned among only the owners of those air space units which were not taken or condemned in such building, on the basis of the proportion that the vested percentage undivided ownership interest in the general common elements appurtenant to each air space unit not taken in such building bears to the total vested percentage undivided ownership interests in the general common elements appurtenant to all air space units collectively in such building which were ~~not taken~~;

(3) the compensation allocated to the taking of each air space unit and the improvements or fixtures which an owner has made within such air space unit shall be allocated only to the owner of such air space unit; and

(4) all other amounts not identifiable in accordance with (1) through (3) above shall be apportioned as the Association determines to be equitable in the circumstances or as determined by judicial decree.

If the allocation of the Condemnation Award is established or agreed to in any stipulation, settlement or judicial decree in eminent domain proceedings, then the Association shall apportion the Condemnation Award in accordance with such allocation to the extent applicable and feasible. The apportioned Condemnation Award shall be deposited and disbursed as soon as practicable in the same manner as is provided in subparagraph 10(j) herein. The proportionate share of the funds in the Capital Reserve Fund for Replacements and in the contingency reserve of the Association appurtenant to the units taken, as of the date of the taking, shall also be included in such deposit and disbursement.

(g) Notification to First Lienors. The Association shall promptly notify the first lienor of a condominium unit of the commencement of eminent domain proceedings to condemn all or a portion of the air space of such unit. The Association shall notify all first lienors of units in the Condominium Project in the event of the commencement of eminent domain proceedings to condemn all or a portion of the general common elements or real property owned by the Association, if the value of the property sought to be taken exceeds \$10,000.00.

12. Quality of Work. Any Reconstruction or any repairs, renovation, improvement or restoration of any portion of the Project by the Association, or by any owner pursuant to any right or permission granted pursuant to this Substituted Condominium Declaration, shall be done and performed diligently, in good faith, and in a good and workmanlike manner, using good quality materials, all consistent with the quality of workmanship, materials and style of the Project, to the extent then reasonably and economically feasible.

13. Amendment. This Substituted Condominium Declaration may be amended upon the written approval in recordable form of the owners of at least 67%, and the first lienors of at least 67%, of the condominium units then subject to this Substituted Condominium Declaration; provided, however, that the provisions of subparagraph 2(a), the schedule of percentage undivided ownership interests in the general common elements set forth in Exhibit "B," the provisions of subparagraph 6(c) relating to the voting rights and limitations of members, the provisions of subparagraph 8(a) relating to the method of prorating general and special assessments among the owners, the provisions of subparagraph 8(g) relating to the priority of a first mortgage lien over the lien of the Association, the provisions of paragraphs 10 and 11 relating to the apportionment of casualty insurance proceeds and Condemnation Awards among the owners, the provisions of subparagraph 10(j) relating to the priority of disbursement of funds, the provisions of this paragraph 13, and the provisions of paragraph 19, may be amended only upon the approval in writing of all the owners of all condominium units then subject to this Substituted Condominium Declaration ~~and all first lienors~~, and provided, further, that paragraph 20 shall not be amended without Declarant's prior written approval until at least 7 years after the date this Substituted Condominium Declaration is initially recorded in the real property records of Routt County.

14. Revocation. This Substituted Condominium Declaration shall be revoked or terminated in its entirety and the condominium status of the Project abandoned only pursuant to paragraphs 10 or 11 herein, or pursuant to Colorado statutes in case of substantial loss to the units and general common elements, or upon the unanimous written approval in recordable form of all owners and all lienors.

15. Property of the Association. The Association may now own or may hereafter acquire, by purchase, lease or otherwise, and may develop, improve, manage, lease, operate, use, encumber and hold for the common use and benefit of all the condominium owners, real property and all kinds of structures and improvements on and interests in real property, and tangible and intangible personal property, and may sell, convey and dispose of all of such property or any portion thereof or interests therein. Title to all such property shall be in the name of the Association or a nominee for the Association. Each owner of a condominium unit may use property of the Association in accordance with the purposes for which it is intended, without hindering, impeding or imposing upon the rights of the other owners, but in accordance with rules and regulations duly established from time to time by the Association, subject to (i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility on Association property, (ii) the easement described in subparagraph 2(b) herein, (iii) easements for encroachments described in subparagraph 4(c) herein, and (iv) the reserved easement in Declarant described in subparagraph 20(a) herein. All costs and expenses of acquiring, developing, improving, managing, leasing, operating, using, holding, selling and disposing of such real and personal property, including (without limitation) all sums paid as fees, costs, interest or payments (whether in installments or otherwise) on any loan or promissory note or any mortgage or other security arrangement or encumbrance securing such loan or promissory note, made or entered into by the Association to finance or pay for all or any part of such acquisition, development, improvement, management, leasing, operating, using, holding,

selling and disposing, shall be "common expenses" under this Substituted Condominium Declaration, payable by the owners and collectible as general or special assessments in the manner described in paragraph 8 herein. Any property acquired by the Association, and any development, improvement, management or lease thereof, shall conclusively be deemed to be for the common use and benefit of the owners if such property is made available by the Association for the use by the owners in the manner for which the same is intended, subject to reasonable rules and regulations and charges and fees of the Association duly established from time to time, irrespective of whether or not any particular owner does in fact use such property.

16. Registration by Owner of Mailing Address. Each owner and each first lienor shall register his mailing address with the Association as provided in its Amended and Restated Articles or Bylaws. Periodic statements for general assessments, notices of special assessments, notices of meetings, and other routine notices from the Association to an owner shall be sent by regular mail, postage prepaid, addressed to the name of the owner at such registered mailing address. Any owner may give written notice to other owners in the same manner. All other notices or demands intended to be served by the Association upon an owner shall be sent by certified mail, postage prepaid, addressed to the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated by the Bylaws of the Association. The Association or managing agent for the Association shall at all times keep and maintain up-to-date records of the names and addresses of all first lienors of condominium units subject to this Substituted Condominium Declaration.

17. Duration of Condominium Ownership. The separate estates created by this Substituted Condominium Declaration and the Map shall continue until this Substituted Condominium Declaration shall be revoked or until its provisions shall terminate as provided herein.

18. Architectural Control. No building, fence, wall or other structure or improvement shall be commenced, constructed, restored, reconstructed or erected upon the general common elements or property of the Association, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, dimensions, color, materials, and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Association. In considering any such proposed plans and specifications, the Board should approve the same only where the structure or improvement (i) will be of a design and location harmonious with the existing building, (ii) conforms to applicable building and zoning codes and ordinances, and (iii) does not materially hinder, impede or interfere with the health, safety, welfare and enjoyment of the general common elements and Association property by the owners. The Association shall have the power and authority, on behalf of owners, and each and any owner shall have the right and power, to seek to restrain and enjoin actual or threatened violations of these restrictions by judicial proceedings, and in the event the Association or an owner is successful in obtaining any injunction, it or he shall be entitled to recover from the enjoined person or entity reasonable attorney's fees and costs, but neither the Association nor any owner shall be entitled at any time to recover any damages whatsoever for actual or threatened violations of these restrictions.

19. Restriction on Certain Acts of the Association. Notwithstanding anything earlier contained herein to the contrary and except as provided by Colorado statutes in case of condemnation or substantial loss to the units and general common elements of the Condominium Project, unless at least two-thirds (2/3rds) of the first lienors (based upon one vote for each first mortgage owned) and at least two-thirds (2/3rds) of the owners (other than the Declarant) of the condominium units then subject to this Substituted Condominium Declaration have given their prior written approval, the Association shall not:

(1) by act or omission, abandon or seek to abandon or terminate the condominium status of the Condominium Project, except as provided in paragraphs 10 and 11 herein;

(2) partition or subdivide any condominium unit, except for or in connection with any sale and conveyance of property or general common elements pursuant to paragraph 10 herein, and any act of the Association in any condemnation proceeding as described in paragraph 11 herein;

(3) by act or omission, abandon, partition, subdivide, encumber, sell or transfer the general common elements, or seek to do any of such acts, except for or in connection with any sale and conveyance of property or general common elements pursuant to paragraph 10 herein, any act of the Association in any condemnation proceeding as described in paragraph 11 herein, and except that the granting of easements for any utilities or for roads or for purposes consistent with the intended use of the general common elements by the Condominium Project shall not be deemed a transfer within the meaning of this prohibition; or

(4) use hazard insurance proceeds from losses to any portion of the Project (whether to units or to general common elements or to property of the Association) for other than the Reconstruction of the damaged or destroyed property, except as otherwise expressly provided in paragraph 10 herein.

20. General Reservations in Declarant.

(a) Reserved Easements. For a period of seven (7) years from the date this Substituted Condominium Declaration is initially recorded in the real property records of Routt County, Declarant reserves a non-exclusive easement on, over and across the real property described on Exhibit "A" hereto outside of the building, and on, over and across roads, driveways and parking areas situated within the real property described on Exhibit "A," if any, to the extent necessary or convenient for (i) completion of construction of any landscaping, improvements or structures originally intended to be a part of the Project, and (ii) construction of any additional improvements, buildings or structures to become a part of the Project.

(b) Right to Select Association Directors. Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Substituted Condominium Declaration, the Amended and Restated Articles of Incorporation or Bylaws of the Association, Declarant reserves the exclusive right to elect,

select and replace from among the owners the Board of Directors of the Association until 4 months after 75% of the condominium units in the Project have been sold and conveyed by Declarant or until 3 years after the first unit in the Project has been sold and conveyed by Declarant, whichever occurs first.

(c) Right to Select Managing Agent. Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Substituted Condominium Declaration, the Amended and Restated Articles of Incorporation or Bylaws of the Association, Declarant reserves the exclusive right to act as or appoint and discharge, from time to time, the managing agent of the Association until 4 months after 75% of the condominium units in the Project have been sold and conveyed by Declarant or until 3 years after the first unit in the Project has been sold and conveyed by Declarant, whichever occurs first.

(d) Right to Use Units. Declarant reserves the right to use any unit owned by Declarant as a model or show unit, management office, sales office, employee housing, customer service office, for storage, or for any other lawful purposes.

(e) Right to Erect Signs. Declarant reserves the easement, license and right to erect and maintain on any of the general common elements or on property of the Association one or more signs which comply with applicable governmental regulations, and to relocate and remove same, all in the sole discretion of Declarant, until all of the units in the project have been sold and conveyed by Declarant or until seven (7) years from the date this Substituted Condominium Declaration is initially recorded in the real property records of Routt County, whichever first occurs.

(f) Right to Alter Defective Common Elements. Declarant reserves the right to modify, alter, remove, improve, or replace defective, obsolete, or non-functional portions of the general common elements when in its sole judgment it is necessary or desirable to do so, for a period ending with respect to the building three (3) years after the initial recording of this Substituted Condominium Declaration in the real property records of Routt County.

## 21. General.

(a) Remedies. The Association, and any aggrieved unit owner, shall have the right of action in equity and at law against any unit owner (including Declarant) who fails to comply with the provisions of this Substituted Condominium Declaration or the Amended and Restated Articles of Incorporation, Bylaws, rules or regulations of the Association. In addition, any unit owner shall have the right of action in equity and at law against the Association if the Association fails to comply with the provisions of this Substituted Condominium Declaration or the Amended and Restated Articles of Incorporation, Bylaws, rules or regulations of the Association.

(b) Invalidity. If any of the provisions of this Substituted Condominium Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall

not affect the validity of the remainder of this Substituted Condominium Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

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

(d) Gender and Number. 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 other genders.

(e) Headings. The headings of paragraphs in this Substituted Condominium Declaration are for convenience of reference only, and shall not be deemed to expand, limit or define any of the provisions hereof.

22. Limitations on Declarant's Obligations. Nothing contained in this Substituted Condominium Declaration or in the Amended and Restated Articles of Incorporation, Bylaws, or Rules and Regulations of the Association shall be deemed to impose upon Declarant or its successors or assigns any obligation to build, construct, or provide any buildings or improvements or to warrant any buildings or improvements which are in fact constructed. All obligations upon Declarant of this nature shall arise only from any executed purchase agreement signed by Declarant and a prospective unit owner.

IN WITNESS WHEREOF, Declarant has duly executed this Substituted Condominium Declaration this 22nd day of February, 1989.

ATRIUMS HOLDING COMPANY, a Colorado corporation,

By: Edmund A. Smith, III, President

ATTEST:

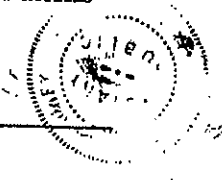
By: Ronnie C. Smith, Secretary

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ROUTT )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of Edwin, 1989, by Daniel A. Smith, Jr. President, and William C. Smith, as Secretary, of Atriums Holding Company, a Colorado corporation.

WITNESS my hand and official seal.

Paul H. Bunn  
Notary Public



My commission expires: 4-12-89

CONSENT, APPROVAL AND JOINDER

THE UNDERSIGNED Public Trustee of the County of Routt, State of Colorado, and the undersigned SaveTrust Federal Savings Bank, formerly Security First Federal Savings Bank, Dyersburg, Tennessee, a federally chartered savings bank, by virtue of a name change only, as beneficiary under the deed of trust to the Public Trustee of Routt County recorded in Book 640, Page 1057, Routt County records, do hereby consent to, approve and join in the above and foregoing Substituted Condominium Declaration.

Dated: 3-13-89

E. Dillon Rich  
E. Dillon Rich, Public Trustee

SAVETRUST FEDERAL SAVINGS BANK,  
formerly SECURITY FIRST FEDERAL  
SAVINGS BANK, a federally chartered  
savings bank

Dated: March 1, 1989

BY: John Howard Shous  
Its Executive Vice President

STATE OF Colorado  
COUNTY OF Routt

The foregoing instrument was acknowledged before me, this 1<sup>st</sup> day of March, 1989, by John Howard Shous as Executive Vice President of SaveTrust Federal Savings Bank, formerly Security First Federal Savings Bank, a federally chartered savings bank.

WITNESS my hand and official seal.

Mary Lou G. [Signature]  
My Commission Expires: 1-14-91

Mary Lou G. [Signature]  
Notary Public

STATE OF COLORADO  
COUNTY OF ROUTT

The foregoing instrument was acknowledged before me, this 13<sup>th</sup> day of March, 1989, by E. Dillon Rich, as Public Trustee of Routt County, Colorado.

WITNESS my hand and official seal.

[Signature]  
My Commission Expires: 6/6/90

[Signature]  
Notary Public

(Attached to and made a part of Substituted Condominium Declaration for The EagleRidge-Atriums Condominiums)

DESCRIPTION OF PROPERTY SUBJECTED

TO THIS

SUBSTITUTED CONDOMINIUM DECLARATION

A tract of land located in Blocks 2A and 3A of EagleRidge Subdivision, Filing No. 2, as filed by plat with the Clerk and Recorder, File No. 9772, Routt County, Colorado, said tract being more particularly described as follows:

Beginning at the NE corner of Block 2A of EagleRidge Subdivision, Filing No. 2, said point being on a curve from which the radius point bears N 74°51'51" E 305.0 feet;

thence along the East boundary line of said Lot 2A on said curve to the left a distance of 56.64 feet with a central angle of 10°38'27" and whose chord bears S 20°27'22" E 56.56 feet to the TRUE POINT OF BEGINNING;

thence continuing along said line on said curve to the left a distance of 158.85 feet, with a central angle of 29°50'29" and whose chord bears S 40°41'50" E 157.06 feet;

thence S 47°45'15" W 47.78 feet to the outside corner of the building foundation;

thence along the outside face of said foundation for the following 13 courses:

1. S 22°53'53" W 1.15 feet,
2. N 67°06'07" W 4.08 feet,
3. S 22°53'53" W 48.01 feet,
4. N 67°10'42" W 14.76 feet,
5. N 88°26'50" W 53.15 feet,
6. S 46°33'10" W 7.20 feet,
7. N 89°10'03" W 9.33 feet,
8. N 43°09'30" W 7.20 feet,
9. N 88°09'30" W 18.19 feet,
10. N 00°59'44" E 24.64 feet,
11. N 88°14'06" W 36.22 feet,
12. S 48°15'55" W 6.21 feet,
13. N 88°18'31" W 6.15 feet,

thence N 88°18'31" W 21.85 feet,

thence N 01°25'28" E 168.00 feet,

thence S 88°18'31" E 124.52 feet to the TRUE POINT OF BEGINNING.

Containing 0.74 acres more or less.

THE RECORDING DATA FOR RECORDED EASEMENTS AND LICENSES APPURTENANT TO, OR INCLUDED IN, THE ABOVE-DESCRIBED PROPERTY OR TO WHICH ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY IS OR MAY BECOME SUBJECT IS AS FOLLOWS:

The above-described property is subject to the following recorded easements:

1. Right of way for ditches or canals constructed by the authority of the United States as reserved in United States Patent recorded in Book 6 at Page 551, Routt County records.
2. All utility, sanitary sewer, non-vehicular pathway, temporary road, roadway construction and maintenance easements as shown on the Plat of EagleRidge Subdivision recorded April 27, 1981, at File No. 8826 and as shown on the Plat of the EagleRidge Subdivision, Filing No. 2, recorded March 13, 1985, in File No. 9772, Routt County records.
3. Terms, agreements, provisions, conditions and obligations of Substituted Protective Restrictions, Covenants, Limitations, Easements and Approvals for EagleRidge Subdivision recorded on December 30, 1988, in Book 639 at Page 1812, Routt County records.
4. Easements to Mt. Werner and Sanitation District to construct, operate, repair and maintain a sewer trunk pipeline recorded in Book 337 at Page 663, and in Book 345 at Page 886 and Page 888, Routt County records.

EXHIBIT "B"

(Attached to and made a part of Substituted Condominium Declaration for The EagleRidge-Atriums Condominiums)

INTERESTS IN GENERAL COMMON ELEMENTS

Air Space Unit Description seven (7) Units	Percentage Ownership in General Common Elements Appurtenant to the <u>Air Space Unit</u>
Unit 24	15.00%
Unit 25	16.00%
Unit 26	15.00%
Unit 27	11.00%
Unit 28	12.00%
Unit 29	11.00%
Unit 30	<u>20.00%</u>
TOTAL	100.00%

DESCRIPTION OF RIGHT TO USE

CERTAIN LIMITED COMMON ELEMENTS

- (1) Each terrace, deck and patio marked as L.C.E. (Limited Common Element) on the Map shall be a limited common element appurtenant to only the air space unit next adjacent and having direct access to such terrace, deck and patio, and the owner or owners of such air space unit shall have the exclusive right and privilege to the use, occupancy and enjoyment of such terrace, deck and patio, subject to the rights of the Association to maintain, repair and have access to such terrace, deck and patio and subject to rules and regulations of use and appearance thereof as may be adopted from time to time by the Association.
- (2) Each garage/entry marked as L.C.E. (Limited Common Element) on the Map shall be a limited common element appurtenant to only the air space unit designated by unit number on the Map, and the owner of such designated air space unit shall have the exclusive right and privilege to the use, occupancy and enjoyment of such garage/entry, subject to the rights of the Association to maintain, repair and have access to such garage/entry and subject to rules and regulations of use and appearance thereof as may be adopted from time to time by the Association.
- (3) Each fireplace marked as L.C.E. (Limited Common Element) on the Map shall be a limited common element appurtenant to only the air space unit in which such fireplace is situated, and the owner of such air space unit shall have the exclusive right and privilege of use, occupancy and enjoyment of such fireplace, including the obligation to pay for any maintenance or repair to such

fireplace, subject to the rights of the Association to access such fireplace and subject to rules and regulations restricting use, alteration and replacement thereof as may be adopted from time to time by the Association.

Recorded at 4:55 O'clock P. M. **DEC 30 1988**

Reception No. **377270** Kim Bonner, Recorder Routt County, CO *96.04*

BOOK **639** PAGE **1812**

BOOK **639** PAGE **1813**

SUBSTITUTED

PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS,

EASEMENTS AND APPROVALS

FOR

EAGLERIDGE SUBDIVISION

RECITALS

WHEREAS, on April 27, 1981, Aut Fax, Ltd, a Cayman Island Company, British West Indies, filed in File 8826 of the official records of the Clerk and Recorder of Routt County, Colorado, a plat of certain real property located in Steamboat Springs, Routt County, Colorado, and known as the EagleRidge Subdivision, said plat having been amended by the replat of EagleRidge Subdivision, Filing No. 2, as filed on March 13, 1985 in File 9772 of the official records of the Clerk and Recorder of Routt County, Colorado, the real property so platted and replatted being described thereby (all of such real property being herein called "EagleRidge" or "EagleRidge Subdivision"); and

WHEREAS, on April 27, 1981, Caltenco-Colorado, Inc., a Colorado corporation, and EagleRidge-Meadows Development Group, a California general partnership (hereinafter called the "Former Developers"), filed in Book 533 at Page 52 of the official records of the Clerk and Recorder of Routt County, Colorado, an instrument styled "EagleRidge Subdivision Protective Restrictions, Covenants, Limitations, Easements and Approvals," dated March 19, 1981, and designated "A part of the plat for the EagleRidge Subdivision, Steamboat Springs, Colorado, as a Deed Restriction on the sale of Blocks in the Subdivision" (hereinafter called the "First Covenants"); and

WHEREAS, on March 13, 1985, the Former Developers filed in Book 604 at Page 1176 of the official records of the Clerk and Recorder of Routt County, Colorado, an instrument styled "First Amendment and Restatement of EagleRidge Subdivision Protective Restrictions, Covenants, Limitations, Easements and Approvals," dated February 28, 1985, and designated "A part of the plat for the EagleRidge Subdivision, Steamboat Springs, Colorado, as a Deed Restriction on the Sale of Blocks in the Subdivision" (hereafter called the "Amended Covenants"); and

WHEREAS, the First Covenants in paragraph F of Article VIII thereof provide that they may be amended by an instrument signed by not less than ninety percent (90%) of the Lot, living unit and commercial space owners (as those terms may be further defined and/or used within the First Covenants) within EagleRidge Subdivision; and

WHEREAS, the Amended Covenants in paragraph F of Article VII thereof provide that they may be amended by an instrument signed by not less than ninety percent (90%) of the Lot, living unit, and commercial space owners (as those terms may be further defined and/or used within the Amended Covenants) within EagleRidge Subdivision; and

WHEREAS, H.C. Bailey Construction Company, First Federal Savings and Loan Association of Southeast Missouri and First Federal Savings Bank of Rogers, Arkansas (as Trustee for the benefit of First Federal Savings Bank of Rogers, Arkansas, First Federal Savings and Loan Association of Malvern, Arkansas, First Federal Savings and Loan Association of Fayetteville, Arkansas, Alpine Federal Savings and Loan Association, Gibraltar Savings, H.C. Bailey Construction Company, and Jackson County Federal Savings and Loan Association of Medford, Oregon) (hereinafter collectively called the "Declarants") are the owners of greater than ninety percent (90%) of all of the lots, living units and commercial spaces located within the EagleRidge Subdivision, having acquired ownership to such real property by Special Warranty Deed recorded in Book 626 at Page 1681, Special Warranty Deed recorded in Book 631 at Page 1435, Sheriff's Deed recorded in Book 631 at Page 1846, Public Trustee's Deed recorded in Book 624 at Page 947, all of the official records of the Clerk and Recorder of Routt County, Colorado.

NOW, THEREFORE, the Declarants do hereby state, publish and declare that:

The First Covenants and the Amended Covenants no longer make sufficient provision "for the preservation of the values and amenities in the EagleRidge Subdivision and for the maintenance of open spaces and other common facilities" within the EagleRidge Subdivision in accordance with the intent and purpose of the First Covenants and the Amended Covenants as stated in paragraphs A and B of Article II in each document; and

Therefore, pursuant to the authorization conferred by paragraph F of Article VIII of the First Covenants and paragraph F of Article VII of the Amended Covenants, the First Covenants and the Amended Covenants are hereby amended in their entirety by deletion, revocation and termination of the entirety of such First Covenants and Amended Covenants and by the substitution in lieu thereof of these Substituted Protective Restrictions, Covenants, Limitations, Easements and Approvals for EagleRidge Subdivision (this instrument being hereinafter called the "Substituted Covenants"). Neither the First Covenants nor the Amended Covenants shall from the date of recording of this Substituted Covenants bind, burden or otherwise restrict or limit the holding, ownership, transfer, sale, conveyance, use, enjoyment and/or occupation of any real property located within the EagleRidge Subdivision, but this instrument shall be deemed to entirely substitute for, replace and supersede both the First Covenants and the Amended Covenants.

Further, EagleRidge Subdivision is a planned community which does or may hereafter contain common areas and other common facilities for the benefit of the owners of interests in real property within EagleRidge Subdivision and their tenants, guests, customers and invitees. Declarants desire to provide a framework of mutual rights and obligations for the benefit of residents within

EagleRidge Subdivision, for the preservation of quality of life, amenities and aesthetic and environmental values in the EagleRidge Subdivision, and for the maintenance, management, operation and improvement of common areas and other common facilities within EagleRidge Subdivision and of property interests owned by the Association. To these ends, Declarants now desire to subject the EagleRidge Subdivision to these Substituted Covenants and to the covenants, restrictions, easements, limitations, approvals, terms, conditions, uses, reservations and obligations hereinafter set forth, each and all of which is and are for the specific benefit of the EagleRidge Subdivision and each owner of real property therein, all in lieu of the First Covenants and the Amended Covenants.

#### DECLARATION

DECLARANTS DO, THEREFORE, HEREBY PUBLISH AND DECLARE that the following restrictions, covenants, limitations, easements, approvals, terms, conditions, uses, reservations, and obligations shall be deemed to run with the EagleRidge Subdivision, shall be a burden and a benefit to Declarants, their successors and assigns, and to any person acquiring or owning an interest in any real property within EagleRidge Subdivision which is subject to these Substituted Covenants, their grantees, successors, heirs, executors, administrators, devisees or assigns, all in lieu of the First Covenants and the Amended Covenants, except that these Substituted Covenants shall not run with any property or property interest that is released from these Substituted Covenants as herein provided and, from and after any such release, shall not either burden or benefit the owner or owners of such released property or property interest, their grantees, successors, heirs, executors, administrators, devisees or assigns.

1. Definitions. As used in these Substituted Covenants, the following terms shall have the following meanings:

(a) "Association" shall mean The EagleRidge Property Owners' Executive Association, a non-profit corporation incorporated pursuant to the Colorado Non-Profit Corporation Act, as amended.

(b) "Block" shall mean those parcels of real property located within the EagleRidge Subdivision that are denominated as such upon the plat of EagleRidge Subdivision, filed in File No. 8826 of the official records of the Clerk and Recorder of Routt County, Colorado, on April 27, 1981, as it shall from time to time be amended, including the amendment by the plat of the EagleRidge Subdivision, Filing No. 2, filed in File No. 9772 of the official records of the Clerk and Recorder of Routt County, Colorado, on March 13, 1985.

(c) "City" shall mean the City of Steamboat Springs, Colorado.

(d) "Committee" shall mean the Architectural Control Committee of the Association, as described in paragraph 4(a) herein.

(e) "Commercial Space" shall mean any structure or part thereof that is used primarily for commercial activity, excluding Ownership Units used for residential occupancy, rental, leasing, sale or purchase.

(f) "Common Area" shall mean all real property designated as "Common Area" on the plat of EagleRidge Subdivision filed on April 27, 1981, in File No. 8826 of the official records of the Clerk and Recorder of Routt County, Colorado (the "EagleRidge Plat"), as it shall from time to time be amended or replatted by instrument filed with the County Clerk and Recorder, including the plat of EagleRidge Subdivision, Filing No. 2, filed on March 13, 1985, in File No. 9772 of the official records of the Clerk and Recorder of Routt County, Colorado (the "EagleRidge Replat"). Any real property so designated as "Common Area" on the EagleRidge Plat or the EagleRidge Replat or any subsequent plat or replat of any property within EagleRidge shall be deleted and excluded from being Common Area within the meaning and intent of these Substituted Covenants only in the manner described in subparagraph 6(d) herein. Common Area shall include any structure that is (1) permitted under the terms of these Substituted Covenants to be constructed upon Common Area, (2) located upon or within such Common Area, and (3) constructed or owned by the Association, but shall not include any structure properly constructed upon or within the Common Area by or on behalf of a person or entity other than the Association.

(g) "Common Expenses" shall mean (i) all expenses expressly declared to be common expenses by these Substituted Covenants or by the Bylaws of the Association, together with all funds assessed for the creation, funding or maintenance of reserves; (ii) all expenses of administering, insuring, operating, improving, conserving and managing the Common Area and all of the real and personal property owned by the Association; (iii) all expenses of cleaning, maintaining, repairing and replacing all of the real and personal property owned by the Association; (iv) real property taxes and special assessments on property owned by the Association; (v) management fees to the managing agent under contract with the Association, legal and accounting fees for Association activities, and income taxes and assessments imposed on Association income or receipts; and (vi) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

(h) "Condominium Unit" shall mean the subdivided enclosed airspace, together with an undivided ownership interest in the Lot underlying such airspace, in a building constructed on a Lot and submitted to condominium ownership by recording of a condominium declaration and filing of an airspace map, all in accordance with Colorado's condominium laws.

(i) "Declarants" shall mean H.C. Bailey Construction Company, a Mississippi corporation, First Federal Savings and Loan Association of Southeast Missouri, a federally-chartered savings and loan association and First Federal Savings Bank of Rogers, Arkansas, a federally chartered corporation (as Trustee for the Benefit of First Federal Savings Bank of Rogers, Arkansas, First Federal Savings and Loan Association of Malvern, Arkansas, First Federal Savings and Loan Association of Fayetteville, Arkansas, Alpine Federal Savings and Loan Association, Gibraltar Savings, H.C. Bailey Construction Company, and Jackson County Federal Savings and Loan Association of Medford, Oregon), jointly.

(j) "EagleRidge" or "EagleRidge Subdivision" shall mean the real property described in the Dedication on the EagleRidge Plat, being all of the property

within the external boundaries of the lands subdivided by the EagleRidge Plat, as amended by the EagleRidge Replat.

(k) "EagleRidge Plat" shall mean the plat of EagleRidge Subdivision filed on April 27, 1981, in File No. 8826, Routt County records. "EagleRidge Replat" shall mean the plat of EagleRidge Subdivision, Filing No. 2, filed on March 13, 1985, in File No. 9772, Routt County records.

(l) "First lienor" shall mean a holder of a promissory note payment of which is secured by a first-lien mortgage or first-lien deed of trust encumbering an interest in an Ownership Unit. "Mortgage" shall include a deed of trust and "mortgagee" shall include the beneficiary of a deed of trust.

(m) "Homeowners' Organization" shall mean any association, corporation or other legal entity that is organized, created and/or established for the purpose of providing to any group of owners within EagleRidge, by virtue of their ownership of Ownership Units, services related to the maintenance, use, repair, replacement and enjoyment of such Ownership Units, and other real property interests appurtenant thereto, such as a condominium association, townhouse association, or property owners' association, but not including the Association.

(n) "Land" shall mean all of the surface area acreage making up the EagleRidge Subdivision, exclusive of lands dedicated in fee to governmental entities and any part of the Land excluded from EagleRidge pursuant to subparagraph 19(a) below. The Land now consists of 32.72 acres, more or less.

(o) "Lot" shall mean any divided Block, lot, parcel or tract of land created by deed or other instrument of conveyance or shown upon the EagleRidge Plat or the EagleRidge Replat or upon any subsequent recorded subdivision plat of the EagleRidge Subdivision or any part thereof, including any townhouse subdivision plat, but excluding any Condominium Unit or estates in airspace above Land or any parcel of land constituting common elements of a condominium project and held as tenants-in-common by the owners of individual Condominium Units to which undivided interests in such parcel of land are appurtenant.

(p) "Owner" shall mean any individual, corporation, partnership, association, trust or other legal entity that is the record owner of an undivided fee simple interest in any Ownership Unit, including a contract seller but excluding those having such interest merely as security for the performance of any obligation, and, where the context clearly requires, "owner" also means all co-owners of any such real property interest.

(q) "Ownership Unit" shall mean (i) any separate Lot within EagleRidge Subdivision owned in fee simple and created by subdivision plat, deed or other instrument of conveyance, and (ii) any separate Condominium Unit within EagleRidge Subdivision which has not been divided either into interval estates or time-share estates as provided by law, and (iii) any Time-Share Estate within any Condominium Unit within EagleRidge Subdivision which has been divided either into interval estates or time-share estates as provided by law.

(r) "Percentage of Common Expense Responsibility" means the pro rata share of liability for payment of the common expenses and general and special assessments of the Association, allocated to an Ownership Unit and the owner thereof, which for any owner shall be equal to the ratio that the number of votes in the Association allocated to the owner's Ownership Unit bears to all of the votes of all members of the Association.

(s) "Project" shall mean any single discrete real property development located within EagleRidge Subdivision and subject to the separate planning and development requirements of the Development Code of the City.

(t) "PUD Plan" shall mean the plat for the planned unit development in the EagleRidge Subdivision, all amendments thereto and all written materials supportive thereof, as approved from time to time by the City.

(u) "Structure" shall mean any improvement affixed to land, including, without limitation, any building and any and all constituent parts thereof; any court, terrace, patio, deck, swimming pool, sauna, kiosk, sign, sidewalk, walkway, wall, fence, hard-surfaced automobile parking area and driveway; any installations, equipment and/or materials which are erected, built or constructed on or under the Land for the purpose of providing any kind of utility service within EagleRidge; any temporary structure such as a tent, shack, or trailer; and any other improvement, thing or object which, when affixed to the Land, may affect the appearance of the Land.

(v) "Substituted Covenants" shall have this instrument, being the "Substituted Protective Restrictions, Covenants, Limitations, Easements and Approvals for EagleRidge Subdivision," and shall also include all amendments to this instrument hereafter recorded in the real property records of Routt County, Colorado.

(w) "Time-Share Estate" shall have the same meaning as is given such term in C.R.S. §38-33-110, as may hereafter be amended, within a Condominium Unit which has been divided either into interval estates or time-share estates.

## 2. Purpose and Intent.

(a) Intent. The intent of these Substituted Covenants is to provide a framework of mutual rights and obligations for the benefit of the Land and all EagleRidge residents; to provide guidelines for the orderly development of the EagleRidge Subdivision; to achieve compatibility of architectural and landscape design within EagleRidge; to establish procedures and processes by which a broad design and development philosophy acceptable to the future residents of EagleRidge may be created, developed and implemented; and to establish remedies for the violation or threatened violation of these Substituted Covenants.

(b) Purpose. The purpose of these Substituted Covenants shall be: (i) to provide direction and establish efficient and appropriate guidelines for landscape and architectural creativity without unduly restricting design freedom; (ii) to protect the quality of life, amenities and aesthetic and environmental values of EagleRidge residents, including, without limitation,

natural resources, architectural design, views, solar rights, noise protection and land values; (iii) to provide for care, upkeep, repair, management, operation and improvement of the Common Area; (iv) to provide a guide of rational design criteria to assist developers within EagleRidge and EagleRidge residents to understand the design review process and the intent of these Substituted Covenants; and (v) to establish procedures, processes, reservations, limitations, rights, obligations, and enforcement remedies that will further the intent and purpose of these Substituted Covenants for the mutual benefit of all owners and residents of real property within EagleRidge.

3. Relationship to City Regulations and Standards. These Substituted Covenants shall be independent of all City codes, regulations and ordinances governing the design and construction of residential and commercial building sites, subdivisions and structures.

4. Site Design and Architectural Review -- Method and Extent of Review.

(a) The Architectural Control Committee. The Board of Directors of the Association shall from time to time appoint three (3) persons to constitute the Architectural Control Committee (the "Committee") of the Association. In the absence of an appointment, members of the Board of Directors of the Association (in order of seniority as Board Members) shall constitute members of the Committee.

(b) Submission of Plans and Specifications. No structure shall be commenced, erected, constructed, reconstructed, placed, used, moved onto or permitted to remain upon any real property within EagleRidge, nor shall any existing structure within EagleRidge be altered in any way that affects the exterior appearance of any structure or the Land, or affects the structural integrity of any structure, unless plans and specifications therefor have been submitted to and approved in writing by the Committee. Such plans and specifications shall be in such form and shall contain such information as is required by these Substituted Covenants.

The Committee shall exercise reasonable judgment in the review of such plans and specifications to the end that all improvements, construction, landscaping and alterations on the Land harmonize with existing surroundings and structures and comply with the Substituted Covenants. The Committee shall approve or disapprove, or approve with conditions, such plans and specifications within thirty (30) days after submission to the Committee. In the event the Committee fails to approve with specific conditions, or to disapprove, such plans and specifications within the 30-day period following submission of plans and specifications, then the Association shall be deemed to have approved such plans and specifications. In any case where plans and specifications have not been approved or deemed approved as above-provided, approval will not be required for a structure and the requirements of these Substituted Covenants will be deemed to have been complied with and satisfied with respect to construction of such structure, if no suit to enjoin any construction has been commenced prior to the substantial completion of such structure.

(c) Preliminary Meeting; Submittal Requirements.

(i) Preliminary Meeting. Purchasers, owners, grantees or assignees of any Lot, or of any Ownership Unit to which external architectural changes are desired to be made, shall meet with the Committee or its appointed representative to discuss proposed development and architectural concepts and their consistency with these Substituted Covenants and to evaluate such concepts in implementing plans and/or specifications in relationship to the PUD Plan. The Committee may charge any applicant a reasonable non-refundable fee to cover costs of review of plans and specifications by consultants. Such fee shall be based upon the size and scale of the development or other changes that are proposed to be made, but in no case shall it exceed the amount of \$1,000.00 (U.S. dollars, December 1, 1988) as adjusted for inflation pursuant to the Consumer Price Index.

(ii) Submittal Requirements. Plans and specifications submitted to the Association shall include four (4) complete copies of required drawings and one (1) accurately colored drawing or rendering of typical elevations of proposed structures and shall be drawn to scale and shall contain, at a minimum, the following information.

(1) A Site Development Plan showing:

-- legend, containing scale, north-point, date, name and address of applicant, Project and person preparing plans, phone numbers of applicant and person preparing plans, and professional stamp or other certification of person preparing plans;

-- site, including all existing Lot lines, easements and Lot area;

-- grades, including existing and proposed grades as they affect the location of any building, cuts and fills and disposition of excess earth;

-- structures, showing location and use of existing and proposed structures, fences and walls (with color and size of materials), open stairways and other projections from exterior walls and structures located at adjacent parcels;

-- use, meaning an indication of the proposed use of all buildings shown on the site;

-- yards, meaning the distance between exterior walls of structures and property lines;

-- traffic circulation, including internal driveways, aisles, number of parking stalls and loading spaces, pedestrian ways, vehicle ingress and egress to buildings;

-- streets, including existing and proposed precise plan lines and improvements, sidewalks, curbs, gutters, driveways and landscaping;

-- drainage facilities, including location, type and number;

-- roof plans, including (1) snow shed diagrams that indicate, without limitation, where each roof will shed, how snow will be removed and how snow buildup will be dealt with, and (2) roof drainage concepts to include, without limitation, drainage of fallen snow;

-- lighting, including location, size and type of all exterior lighting;

-- garbage disposal areas, including location and indication of method of screening; and

-- landscaping plan, showing plant location, species and size of plantings, and specifications for irrigation systems, and indicating intent for providing for ongoing landscape maintenance.

(2) Building Elevation showing:

-- all principal exterior walls, fences, roof projections and other structures with height dimensions;

-- type and color of roof and wall material to be used;

-- typical elevation or perspective accurately depicting color of materials to be used;

-- sign location, including the relationship of signs to a building's architecture; and

-- location of roof equipment, exterior lights and other exterior mechanical utility equipment that may potentially be located upon the roof of a building.

(3) Written Information Summary indicating:

-- density;

-- number of parking spaces; and

-- square footage of Lot area, area landscaped, unimproved future building sites, and each proposed structure, including percent of coverage.

(d) Construction Limitation. No construction or installation of any structure, or site development work, within EagleRidge Subdivision may be commenced until approval by the Committee is obtained or is deemed to have

occurred, or if conditional approval has been granted, until the conditions have been satisfied or waived by the Committee.

(e) Duration of Approval. The approval granted by the Committee shall be valid for five years from the date of signed approval by the Committee. The purchaser, grantee or assignee of any EagleRidge Lot may request in writing an extension of the approval prior to the expiration of the approval. Such ~~extension may be granted or granted with conditions by the Committee in its sole discretion.~~

(f) Strict Conformity Requirement. All construction within EagleRidge shall be performed in strict conformity with plans and specifications approved by the Committee pursuant to these Substituted Covenants, unless a variance therefrom or exception thereto is granted as provided in paragraph 16 of these Substituted Covenants. Violations of this subparagraph are subject to the remedies provided in paragraph 17 of these Substituted Covenants.

(g) Inspection Permitted. All construction within EagleRidge may be inspected by the Committee, or a designated member or members thereof, and/or by a professionally licensed architect, engineer or other consultant designated by the Committee, in order to assess compliance with approved plans and specifications. Nothing herein shall be construed to place upon the Committee, its members or any consultant designated by the Committee, any duty to so inspect any such construction or any duty to ensure such compliance, and the Committee, its members, and its consultants shall not have any liability if any construction does not so comply.

5. Design Criteria.

All architectural, landscaping and other design elements, both as planned and as constructed, including, without limitation, the massing, forms, style, scale, shape, size, character, and exterior colors and materials of all roofs, walls, buildings and other structures or portions thereof, shall blend with and complement the natural setting and the neighborhood and shall be closely compatible with corresponding elements of existing structures within EagleRidge. Additionally, all site development, improvements, landscaping and structures in EagleRidge shall be designed and constructed to be consistent with the following criteria:

(a) Architecture.

(i) "False" or "decorative" facade treatments, wherein unrelated materials are placed on a structure, shall be avoided.

(ii) Natural materials shall be used whenever possible. All exterior walls shall be of stucco, cream colored to match existing structures.

(iii) Protection of existing critical views is encouraged.

(iv) As a visually dominant feature in a hillside community, roofs should be constructed of a simple range of materials. Roofs shall be

constructed of copper-colored metal sheeting with vertical ribbing and must be designed and constructed so as to easily shed snow and prevent ice build-up.

(v) Stacks, vents, antennae and other mechanical equipment should be organized to minimize adverse visual impacts. Location of such equipment, especially of antennae, within a structure or at ground level is preferable to roof mounting unless so locating it would adversely affect the equipment performance, streetscape, pedestrian circulation or open space.

(vi) Accessory structures and construction should be located in the immediate vicinity of the main structure, should be visually integrated with the main structure and blend in with the natural terrain and vegetation of the site.

(vii) All structural design and all construction should achieve a sense of human scale; windows, wall insets, balconies and window projections are examples of building elements that may help reduce the scale of large structures.

(viii) Entries to structures should be protected from the elements and should afford a "sense of entry" for the structure.

(ix) Each phase of a "phased development" should attain a visual completeness.

(x) Exterior fire escape stairs and other appurtenances are not encouraged and will not be approved unless designed and constructed as integral, non-intrusive parts of a structure's facade.

(b) General Siting.

(i) Grading and vegetation removal should be minimized and, whenever feasible, blend into adjacent land forms through the utilization of contour grading. Cutting, filling, padding or terracing of a site should be limited to the minimum amount necessary for the construction of structures and paved areas.

(ii) Grading or removal of vegetation which could contribute to erosional instability, prolonged soil exposure and interruption of adequate surface runoff is not permitted.

(iii) Critical views should be preserved by limiting structure height. Introduced vegetation should be located so as not to block critical views from uphill structures, streets and/or vista points.

(iv) Construction on ridgelines should complement the existing silhouette and enhance the ridgeline silhouette.

(v) Structures should be designed and sited so as to provide a strong functional relationship to the site. Required side and rear yards should

be utilized and should be integrated into the spatial arrangement of the overall site. Inaccessible yards and similar outdoor spaces that tend to encourage accumulation of trash should be avoided.

(vi) Covered parking for all residential units, in the form of garages and carports, is encouraged. Carports and garages that are attached to or an integral part of residential or commercial structures are encouraged.

(vii) Parking facilities for multi-family and commercial structures should be sufficient to meet the requirements of the occupants, and parking facilities are encouraged to be located within the structure.

(viii) All attached garages and carports shall match the architectural character of the structure, including, without limitation, its massing, form, style, scale, shape, character, colors and materials.

(c) Streetscape.

Streetscape is the architectural and landscape design of paths, streets, walkways and the areas that border them.

(i) Trees shall be of a species that flourishes in the natural habitat and climatic zone in which EagleRidge is located.

(ii) Street trees should be adequately rooted and of a sufficient size when planted to avoid damage. Street trees shall be properly planted in terms of soil conditioning and staking should be maintained for two years, and more if necessary, to assure the healthy establishment of the plant.

(iii) Street trees should be of low maintenance and water demand and of consistent species, especially on EagleRidge Drive. Ornamental or flowering trees can be used as accent trees for dramatic effect at intersections or entrances.

(iv) Rights-of-way for access within Lots should include drainage swales or natural waterways when these are appropriate and should not in any case create standing water.

(v) Paved areas, such as parking lots, driveways and sidewalks, should be well-integrated into the site and should relate to existing and proposed structures and should be landscaped to reduce visual impact.

(vi) Multiple small, paved parking lots should be preferred to single large, paved lots.

(vii) Separate vehicular and pedestrian circulation systems should be provided.

(viii) Common driveways, which provide vehicular access to more than one site, may be acceptable, but are not specifically encouraged. On-street parking should be discouraged. Exposed, off-street parking facilities

should be located to the rear of sites, with street frontages devoted to building architecture and landscaping. Off-street parking areas should be designed and landscaped so as to minimize glare, reflection and the visual impact of large numbers of cars, and should be screened from, but readily accessible to, residential structures.

(ix) Facilities for bicycle parking shall be provided where deemed necessary, and where provided, shall be located within parking structures.

(d) Drainage, Snow Removal and Storage.

(i) Open channels in the form of natural swales, waterways or landscaped constructed waterways are encouraged.

(ii) Where possible, Lot drainage should be directed to the street on which the Lot fronts.

(iii) All drainage easements and rights-of-way shown on the EagleRidge Plat or EagleRidge Replat shall remain free and clear and undisturbed during and after construction.

(iv) Each site plan shall make provision for snow storage in landscaped areas or other areas of the finished site, so that snow can be easily removed and stored away from parking areas and walkways.

(v) Snow shall not be stored where it might create spring drainage or runoff problems for structures or pedestrian or auto paths.

(vi) If snow storage provisions cannot be made according to these Design Criteria, the developer shall be responsible to implement a snow removal plan and to provide that its requirements run with the land as a restriction on the Lot.

(e) Utilities and Trash.

(i) All utility lines and appurtenances within the EagleRidge Subdivision shall be located underground, except for switches and transformers which may be located above ground.

(ii) Electric or telephone junctions or transformers shall be colored and landscaped to blend with the surrounding site and structures. Service entry and meters shall be screened or concealed.

(iii) Trash containers and storage areas shall be concealed from view by walls or landscaping, and structures without sufficient exterior space for concealed trash storage shall provide interior trash storage.

(iv) Structures or landscaping to conceal trash containers shall blend with the surrounding landscape and shall be designed and constructed to prevent drainage problems such as water build-up and vandalism by humans or animals.

(f) Solar Rights and Energy Conservation.

(i) No structure of any nature, and no landscaping, vegetation, or other object of any type, may be constructed, erected, altered, maintained, planted or cultivated so as to shade, intrude upon or encroach into or onto any roof surface or roof areas designed or required to enclose, contain or support collection surfaces of a solar collection device during that period of time commencing at 9:00 o'clock a.m., True Solar Time, and continuing through 3:00 o'clock p.m., True Solar Time, on each day of the year, or so as to in any way obstruct or otherwise interfere with the sunlight necessary for the efficient operation of said solar equipment.

(ii) In the event any structure, landscaping, vegetation or other object is constructed, erected, altered, maintained, or cultivated so as to violate the provisions of this subparagraph (f), then, and in that event, such violation shall be deemed a public and private nuisance and shall be subject to any appropriate action, including legal proceedings to prevent, enjoin, abate, or remove such nuisance, which action or legal proceedings may be commenced by the owner of the property within EagleRidge suffering the nuisance, or by any owner of an Ownership Unit.

(iii) Structures should be oriented, designed and constructed to reduce energy consumption. Energy conservation designs are in all cases encouraged.

(g) Signs and Lighting.

(i) Exterior lighting should be designed and constructed as to be a complementary part of architectural and landscaping themes.

(ii) Area lighting should be predominately down-directed to minimize spillover of light off-site.

(iii) Lower intensity lumination with adequate shielding and warm colors is encouraged.

(iv) Street signing should be designed to complement surrounding architectural and landscaping context and constructed or assembled from materials that complement street furniture, light fixtures and surrounding structures and landscaping.

(v) Location, design, size and appearance of all signs advertising new Project development in EagleRidge shall be approved by the Committee before commencement of construction activity on a Project.

(h) Setbacks and Building Heights.

(i) The Association shall have the right to require setbacks and maximum structure heights more restrictive than City requirements in order to satisfy the general intent and specific design criteria of these Substituted Covenants.

(ii) Given the unique character of the EagleRidge Subdivision site, setbacks and maximum structure heights shall be varied to best complement these sites and to minimize impacts on the Land and surrounding neighborhoods.

6. Common Area.

(a) License on Paths and Drives. Each owner of an Ownership Unit, by virtue of his ownership thereof and his membership in the Association, is vested with and shall have during his period of ownership, for his own use and the use of his guests, employees, agents and invitees, a non-exclusive license in common with all other owners of Ownership Units on, over and across the exterior motor vehicle driveways and roads and the pedestrian walkways and sidewalks surfaced with concrete or asphalt, as are now situated or as may hereafter be constructed or relocated within the Common Area, for purposes of ingress and egress to such Ownership Unit from public streets near or within EagleRidge and for recreation activities; provided, however, that (i) such license shall not exist upon or burden or encumber any part of the Common Area upon which there are no exterior motor vehicle driveways or roads and no walkways or sidewalks surfaced with concrete or asphalt, (ii) such license is subject and subordinate to the right and authority of the Association or the owner in fee of the Common Area to construct, locate, relocate, or remove driveways, roads, walkways and sidewalks, and to place structures upon the Common Area, and (iii) such license is subject also to reasonable rules and regulations of use as may be adopted and amended from time to time by the Association. Such license shall be appurtenant to each owner's Ownership Unit, shall run with such Ownership Unit to the respective successive owners thereof and shall be irrevocable.

(b) Easement to Association. Declarants hereby grant, bargain and convey unto the Association a perpetual and non exclusive easement (the "Easement") on and over the Common Area for the sole purpose of recreational, educational and aesthetic uses of the membership of the Association, including the right to construct, install, operate, manage and repair structures in the Common Area for such purposes, provided that (i) the uses of any member of any part of the Common Area or any structure thereon under this grant of easement are limited by all rules and regulations of the Association hereafter in effect, (ii) all rights of a member derive solely through the Association and are not exercisable if prohibited by the Association, (iii) this easement shall terminate on, under and over any part of the Common Area on which a structure (other than a sidewalk, walkway, road or driveway) is constructed or owned by a person or entity other than the Association, so that this easement shall never extend to nor encumber any structure or the land underlying such structure within the Common Area, other than a sidewalk, walkway, road, driveway, or a structure owned by the Association, (iv) this easement is subordinate to the rights granted to all owners as described in subparagraph 6(a) above, the easement for encroachments described in subparagraph 6(f) below, and any and all easements of record, and (v) this easement may be vacated and released as provided in subparagraph 6(c) below.

(c) Release of Easement. The Association may at any time vacate and release part of the Easement as encumbers any portion of the Land. The Easement shall be deemed to have been so vacated and released, and thus made of no further force or effect, with respect to any portion of the Land, if the

Association: (i) executes and records in the real property records of Routt County, Colorado, a quit claim deed conveying unto the then fee owner of the portion of the Land which is burdened by the Easement, all of its right, title and interest in and to the Easement with respect to such portion of the Land, or (ii) executes, acknowledges and records in the real property records of Routt County, Colorado, a document stating that the Easement is vacated and released with respect to a described portion of the Land.

(d) Deletion as Common Area. Any portion of the Land designated as "Common Area" on the EagleRidge Plat, the EagleRidge Replat, or any subsequent plat or replat of any part of the Land, shall be deleted and excluded from being Common Area within the meaning and intent and restrictions of these Substituted Covenants if (1) written approval of such action, in recordable form, has been obtained from each Declarant who, at the time of such proposed deletion and exclusion, is the owner in fee simple of any Ownership Unit, and (2) the Association executes, acknowledges and records in the real property records of Routt County, Colorado, a document stating that a portion of the Land as particularly described in such document is deleted and excluded from being Common Area and further stating that the Easement described in subparagraph 6(b) above is vacated and released with respect to such described part of the Land. Such portion of Land shall not, however, be excluded from EagleRidge or the Land except in compliance with paragraph 19(a) herein.

(e) Use of Common Area. Each owner shall be entitled to use the Common Area burdened by the Easement in accordance with the purposes for which it is intended, without hindering, impeding or imposing upon the rights of the other owners and in accordance with rules and regulations duly established from time to time by the Association. The Association shall have the right and power to charge reasonable admission and other fees for the use of any facility or structure which is a part of the Common Area or which is situated on property owned by the Association.

(f) Encroachments. If any portion of the Common Area encroaches upon any Ownership Unit, or if any Ownership Unit encroaches upon any other Ownership Unit or upon any portion of the Common Area, or if any portion of the Common Area encroaches upon any real property owned by the Association, or if any Ownership Unit encroaches upon any real property owned by the Association, as a result of the construction of a structure, or if any such encroachment shall occur hereafter as a result of settling or shifting of a structure, a valid easement for the encroachment and for the maintenance of the same, so long as such structure stands, shall exist. In the event a structure, any Ownership Unit, any adjoining Ownership Unit, or any adjoining portion of Common Area shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachment of any part of the Common Area upon any Ownership Unit or upon any real property owned by the Association, and encroachment of any part of the real property owned by the Association upon any Ownership Unit or upon any portion of the Common Area, and encroachment of any part of any Ownership Unit upon any other Ownership Unit or upon any Common Area or upon any real property owned by the Association, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the restored or reconstructed structure shall stand. Each Ownership Unit and every

portion of the Common Area shall have an easement for lateral and subjacent support from every other Ownership Unit and portion of the Common Area and property owned by the Association.

7. Administration, Management and Voting.

(a) Administration and Managing Agent. The Common Area shall be administered and managed pursuant to these Substituted Covenants and the Articles of Incorporation and Bylaws of the Association. The Board of Directors of the Association may contract with or employ any managing agent for the Association, pursuant to its Articles of Incorporation or Bylaws, to perform inter alia any of the duties, services, powers and responsibilities of the Association set forth in these Substituted Covenants or in its Articles of Incorporation or Bylaws. The Association may from time to time record in the real property records of Routt County, Colorado, its acknowledged certification of the name and address of its managing agent, which certificate shall be conclusive evidence of the identity of such managing agent until a later certificate is recorded.

(b) Membership in Association. Each owner of an Ownership Unit (including each Declarant as respects Ownership Units from time to time owned by such Declarant, but not including the Association with respect to any Ownership Unit at any time owned by the Association) shall be a member of the Association and shall remain a member until he ceases to be an owner. Each owner of an undivided fee interest in an Ownership Unit amounting to less than the entire fee interest in such Ownership Unit, including a co-owner as tenant-in-common or joint tenant, and including an owner of a Time-Share Estate, shall be a member of the Association. Each member shall comply strictly with the provisions of these Substituted Covenants and of the Articles of Incorporation and Bylaws of the Association. All of the owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact, in their name, place and stead, for the purpose of managing, improving, repairing, operating, and otherwise dealing with the Common Area.

(c) Votes. The owner or owners of each Ownership Unit shall be allocated votes in the Association as follows:

(i) Any Ownership Unit within EagleRidge shall, for purposes of allocating votes in the Association, be deemed to be a "Condominium Unit," a "Lot," or a "Time-Share Estate," each of which terms shall have the same meaning as that assigned to it by definition in paragraph 1 of these Substituted Covenants.

(ii) Each Lot shall be allocated votes in the Association equal to one hundred (100) votes per acre of Land within such Lot. Estates in airspace above such Lot created pursuant to C.R.S. §§38-32-101, et seq. and not constituting condominiumized airspace shall not be allotted any votes in the Association, but all votes shall be allotted to the owner of the Lot underlying such estate or estates above the surface.

(iii) Each Condominium Unit shall be allocated votes in the Association determined by multiplying the acreage within the subdivided parcel of Land which constitutes a common element of the Project in which such Condominium Unit is situated and in which the owner of the condominium unit has an undivided ownership interest, as a tenant-in-common with other owners of Condominium Units in such Project, by one hundred (100) and then allocating such total votes among all of the owners of Condominium Units to which an undivided interest in such parcel of Land is appurtenant, in accordance with the vested undivided percentage interests in such parcel of Land made appurtenant to such Condominium Units by the applicable Condominium Declaration.

(iv) Each Time-Share Estate shall be allocated votes in the Association determined by dividing the number of votes which would otherwise have been allocated to the Condominium Unit in which such Time-Share Estate is situated, if such Condominium Unit had not been divided either into interval estates or time-share estates, by the total number of interval estates or time-share estates created and existing within such Condominium Unit pursuant to the Time-Share Estate documents.

(v) In allocating votes, fractional votes (to two decimal places) shall be permitted.

The Association shall not be entitled to vote with respect to any Ownership Unit owned by the Association and no Ownership Unit owned by the Association or by any governmental entity shall be allocated any votes during the period of such ownership.

(d) Rules and Regulations. Each member and his guests, invitees and tenants shall be bound by and shall comply with rules, regulations, resolutions and decisions of the Association duly made and adopted. Failure of a member or the guests, invitees or tenants of such member, to comply with any such provision, rule, regulation, resolution or decision shall be grounds for an action to recover actual damages or to obtain injunctive relief, or both, together with attorney's fees and costs, maintainable by the Association on behalf of the owners or, in a proper case, by an aggrieved owner. Further, where a specific rule or regulation provides for assessment of a liquidated damage sum by the Association for violation thereof, then the failure of a member, or a guest or invitee or tenant of such member, to comply with such rule or regulation shall cause, at the sole option of the Association and on notice to such member, such liquidated damage sum to be a special assessment against such member's Ownership Unit only, for which the Association shall have the lien and collection rights and remedies as are provided in paragraph 9 herein. In addition, the Association or its managing agent may, during the period any general or special assessment is past due and unpaid by a member or during the period of any failure by a member, or a guest or invitee or tenant of such member, to comply with any such rule or regulation referred to in the preceding sentence, (a) suspend the right of such delinquent member and his guests, invitees and tenants to use Common Area and property owned by the Association (provided that access to such member's Ownership Unit shall never be denied), and/or (b) suspend the voting privileges in the Association allotted to such

Ownership Unit. However, suspension of voting privileges in the Association may be exercised only after at least 3 days' advance written notice given by the Association to the delinquent member and to the first lienor of the affected Ownership Unit. Further, no suspension of voting privileges shall affect the rights of any first lienor to vote pursuant to a proxy granted in connection with a first mortgage on the affected Ownership Unit.

8. Maintenance and Repairs. The Common Area and all structures thereon owned by the Association shall be administered, insured, conserved, managed, maintained, operated, improved, repaired and replaced by the Association. All of the costs and expense of administering, insuring, conserving, managing, maintaining, operating, improving, repairing and replacing the portion of the Common Area burdened by the Easement, any structures owned by the Association and situated in the Common Area, and all other property of the Association are common expenses of all owners. An owner shall pay all costs of repairing, renovating and replacing any structure or improvement on the Common Area owned by the Association which is required by reason of damage thereto proximately caused by the willful and wanton act or the negligence of such owner, which costs shall be a special assessment against such owner's Ownership Unit only.

9. Assessments for Common Expenses; Lien; Collection of Assessments; Remedies of Association; and Estoppel Certificate of Assessments.

(a) Obligation to Pay Assessments. The owner of each Ownership Unit shall pay the full amount of any special assessment assessed specifically against such owner's Ownership Unit pursuant to paragraph 7(d) or 8 above, his pro rata share of the common expenses allocated to such Ownership Unit as general assessments, and his pro rata share of all special assessments allocated to such Ownership Unit, such pro rata shares being the Percentage of Common Expense Responsibility of such Ownership Unit. The Percentage of Common Expense Responsibility allocated to each Ownership Unit within EagleRidge shall be the percentage determined by dividing the number of votes in the Association allocated to such Ownership Unit by the total of all votes of all members of the Association and multiplying the product by 100.

(b) Liability of Co-Owners. Each owner is liable, and if an Ownership Unit is owned at any time by two or more persons or entities in undivided interests pursuant to a form of concurrent co-ownership recognized by Colorado law, then each co-owner of such Ownership Unit is jointly and severally liable with all other co-owners of such Ownership Unit, to the Association for payment of all general and special assessments, fees (including attorneys' fees), interest and charges levied against or with respect to such Ownership Unit, and for the performance and observance of all of the duties and responsibilities of an "owner" with respect to such Ownership Unit. If Time-Share Estates have been created with respect to a Condominium Unit, such Condominium Unit shall nevertheless continue to be deemed to be a single Ownership Unit for purposes of assessments, charges and fees of the Association, and each of the owners of Time-Share Estates created within such Condominium Unit shall be jointly and severally liable with all other owners of Time-Share Estates within such Condominium Unit for the general and special assessments, charges and fees of the Association levied against such Condominium Unit.

(c) Association to Levy Assessments. The Association is hereby authorized and empowered to fix, determine, levy and collect general and special assessments from the owners (i) to pay for the common expenses, (ii) to pay for special expenses authorized by the Board of Directors of the Association and permitted as a special assessment by these Substituted Covenants or by the Bylaws of the Association, and (iii) to fund and contribute to any reserves deemed appropriate by the Board of Directors, including (without limitation) a capital reserve for repairs, maintenance, replacement and acquisition of Association property and a contingency reserve to meet unanticipated common expenses. Assessments for the capital reserve for repairs, maintenance, replacement and acquisition of Association property shall be made on a regular and periodic basis.

(d) Procedures for Payment. The Bylaws of the Association shall establish the procedures by which the general and special assessments shall be made known to and paid by the owners. Such procedures may include the determination and levying of such assessments as a periodic and advance (but not less often than quarter-annual) installment billing of an annual budget (including funding of reserves), in which event the common expenses shall be deemed to have been severally incurred as of the respective dates of the installment billings. Such procedures may also include billing of assessments to each Homeowners' Organization for payment by such Organization of the amounts due from all members of the Association who are also members of such Organization.

(e) Suit. An action may be brought by the Association in a court of competent jurisdiction to recover unpaid general and special assessments, late payment charges, attorney's fees and costs, and accrued interest from the owner or owners liable for payment thereof, with or without foreclosing the lien of the Association described in subparagraph 9(g) below. In any such action the Association shall also be entitled to recover judgment from such owner or owners for all of the Association's attorney's fees, costs of discovery and court costs incurred in connection with such suit. All of such attorney's fees and costs incurred after delinquency of general or special assessments shall be a special assessment to the Ownership Unit of the delinquent owner in any event.

(f) Interest. Unpaid general and special assessments shall bear interest from and after the date the same are due until paid at the rate of one and a half percent (1½%) per month. The Bylaws of the Association may also empower the Association to levy reasonable late charges against a delinquent owner and such owner's Ownership Unit for late payment of any general or special assessment.

(g) Lien. All unpaid general assessments for common expenses (including contributions to any reserves), all unpaid special assessments, accrued interest on and any late charges levied with respect to any unpaid general or special assessment, and attorney's fees and costs of discovery and suit incurred in connection with enforcement of any unpaid general or special assessment (whether or not suit is brought), as are levied against an Ownership Unit and the owner of such Ownership Unit, shall each and all constitute a lien on such Ownership Unit in favor of the Association. Such lien of the Association on the Ownership Unit shall be prior and superior to all other liens, mortgages and encumbrances

recorded in the real property records of Routt County, Colorado, after the date of the initial recording of these Substituted Covenants in the Routt County property records, EXCEPT for (i) the lien for real property taxes and special assessments imposed against such Ownership Unit by a governmental entity, and (ii) the lien of the first-lien mortgage of record encumbering such Ownership Unit at any time, to both of which the said lien of the Association shall at all times be subordinate. The Association's lien for any unpaid sum shall attach to an Ownership Unit from the date of the initial recording of these Substituted Covenants in the real property records of Routt County, Colorado, but such lien shall be inchoate until any assessment levied against such Ownership Unit has become past due. The lien of the Association against an Ownership Unit may be evidenced by a notice thereof executed by the Association or its managing agent and recorded in the real property records of Routt County, setting forth therein (i) the amount of the unpaid sums (itemized showing general and special assessments, interest, fees and late charges), (ii) the name of the owner or reputed owner and the legal description of the Ownership Unit against which such lien is asserted, and (iii) a statement that such lien extends to reasonable attorney's fees, costs of discovery and suit, and other costs incurred in enforcing such lien. Failure of the Association to record any such notice in the Routt County property records shall not, however, defeat such lien of the Association nor affect its priority as above provided.

(h) Foreclosure. The Association's lien against an Ownership Unit as described in subparagraph 9(g) above may be foreclosed by the Association in like manner as foreclosure of a mortgage on real property under Colorado law, and in any such foreclosure the Association shall recover judgment against the owner of such Ownership Unit for all attorney's fees and costs of discovery and suit incurred by the Association. The Association shall be entitled to purchase the Ownership Unit at the foreclosure sale, and thereafter to acquire, hold, lease, mortgage or convey the same. Each owner, by accepting a deed to an interest in an Ownership Unit, shall conclusively be deemed to have waived the homestead exemption of such owner with respect to the liability of such Ownership Unit at any time for the lien securing payment of unpaid general and special assessments, interest, fees and late charges as described in subparagraph 9(g) above.

(i) No Exception. No owner shall exempt himself from liability for payment of general or special assessments by waiver of the use or enjoyment of the Common Area or property of the Association, by abandonment of his Ownership Unit, or by operation of subparagraphs 9(e), 9(g) or 9(h) above.

(j) Liability of Transferee. In case of sale or other voluntary transfer of an Ownership Unit or an interest therein with respect to which general or special assessments, interest, late payment charges, costs or fees are accrued and unpaid as of the date of transfer, the purchaser or other transferee shall be jointly and severally liable with the seller or transferor for such unpaid sums. Therefore, if any lienor (including a first lienor) of an Ownership Unit obtains title to such Ownership Unit by a voluntary deed in lieu of foreclosure, then such lienor shall be jointly and severally liable for all unpaid general and special assessments, late payment charges, interest, costs and fees accrued against such Ownership Unit as of the date of transfer, and such lienor shall be

deemed an owner for all purposes from and after such transfer. However, if a first lienor obtains title to an Ownership Unit by sheriff's deed or public trustee's deed upon foreclosure of the first-lien mortgage against such Ownership Unit, then such first lienor is not liable for any unpaid assessments, charges, interest, costs or fees which accrued against such Ownership Unit prior to the acquisition of title by such first lienor; provided, however, that such first lienor shall be deemed an owner for all purposes from and after the time such sheriff's deed or public trustee's deed could have been issued.

(k) Estoppel Certificate. Within 10 days after written request of any owner, mortgagee, prospective mortgagee, purchaser or other prospective transferee of an Ownership Unit, or of any title insurer, the Association shall issue a written statement to the requesting party setting forth with respect to such Ownership Unit the amount of any unpaid general and special assessments, the dates on which such assessments respectively became or shall become due, the amount of any credits to the account of such Ownership Unit, and the amounts of any interest, late payment charges, attorneys' fees or costs due with respect to such Ownership Unit. Such statement, for which a reasonable fee may be charged, is binding upon the Association in favor of the person or entity who requested such statement and who has relied thereon in good faith, and when such request was made by a title insurer, shall be binding upon the Association also in favor of the person or entity whose interest in such Ownership Unit was insured by such insurer. If the Association fails to issue and mail such statement to the person or entity who made written request therefor within 10 days after actual receipt by the Association of such written request, all unpaid general and special assessments, charges, fees, interest and costs which became due prior to the date such request was actually received by the Association shall be subordinated to the lien or other interest in the Ownership Unit of the person or entity requesting such statement, and when such request was made by a title insurer, shall be subordinated to the lien or other interest in said Ownership Unit of the person or entity whose interest in the Ownership Unit was insured by such insurer. The Association shall have current copies of these Substituted Covenants and the Articles of Incorporation, Bylaws, rules and regulations of the Association, and the books, records, records of receipts and expenditures of the Board of Directors, and financial statements of the Association available for inspection by any owner and any holder, insurer or guarantor of a first-lien mortgage on an Ownership Unit during normal weekday business hours. If at any time an audited financial statement for the preceding fiscal year is not available, then any holder, insurer or guarantor of a first-lien mortgage shall be allowed to have an audited financial statement prepared at the sole expense of such holder, insurer or guarantor of a first-lien mortgage.

(l) Lienor Right to Pay. Any first lienor of an Ownership Unit may (but shall not be required to) pay any unpaid general or special assessments, accrued interest, late payment charges, fees or costs with respect to such Ownership Unit, and upon such payment such first lienor shall have a lien on such Ownership Unit for the amount so paid of the same rank as the lien described in subparagraph 9(g) above and shall be subrogated to the rights and remedies of the Association to collect such amount.

10. Insurance.

(a) Policies to be Maintained. The Board of Directors of the Association shall, on behalf of the owners:

(1) keep all structures on the Common Area owned by the Association, all structures situated on real property owned by the Association, and all real and personal property owned by the Association, insured at all times against loss or damage by fire, with extended coverage "all risks" endorsement, in an amount not less than 100% of the maximum insurable value thereof (being 100% of the current replacement cost including land and excavations);

(2) provide and keep in force, for the protection of the Association, its officers and directors, and all the owners, general public liability insurance against claims for bodily injury or death or property damage occurring upon or in the Common Area or upon or in property owned by the Association, in limits of not less than \$1,000,000.00 per occurrence and not less than \$1,000,000.00 aggregate for bodily injury or death to persons or damage to property, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried; and

(3) provide and keep in force such other insurance as the Board of Directors may consider necessary or advisable against such other insurable hazards as from time to time are commonly insured against in the case of similar property in similar locations elsewhere and in the case of entities similar to the Association.

(b) Premiums. Premiums on all insurance policies carried pursuant to this paragraph 10 by the Association shall be common expenses of all of the owners.

11. Quality of Work. Any construction, installation, repairs, renovation, improvement or restoration of any structures in the Common Area by the Association shall be done and performed diligently, in good faith, and in a good and workmanlike manner, using good quality materials, all consistent with the quality of workmanship, materials and style of EagleRidge, to the extent then reasonably and economically feasible.

12. Amendment or Revocation. These Substituted Covenants may be amended or revoked upon (1) the written approval in recordable form of the owners of at least sixty-seven percent (67%) of the Ownership Units then subject to these Substituted Covenants and, in addition, (2) the written approval in recordable form of each Declarant who, at the time of such proposed amendment or revocation, is the owner in fee simple of any Ownership Unit; provided, however, that the provision of subparagraph 9(g) with respect to the priority of a first mortgage lien over the lien of the Association shall not be amended without the prior written consent of all of the first lienors of Ownership Units. Any amendment shall be in writing, duly executed and acknowledged by at least the required number of owners and by each Declarant who, at the time of such proposed amendment or revocation, is the owner in fee simple of any Ownership Unit, and recorded in the real property records of Routt County, Colorado.

13. Property of the Association. The Association has acquired an easement on and over the Common Area pursuant to subparagraph 6(b) above, and may hereafter acquire, by purchase, lease or otherwise, and may develop, improve, manage, lease, operate, take and give options, use, encumber and hold for the common use and benefit of all the owners, real property and all kinds of structures and improvements on and interests in real property, and tangible and intangible personal property, and may sell, convey and dispose of all of such property or any portion thereof or interests therein. Title to all such property shall be in the name of the Association or a nominee for the Association. Except to the extent limited or prohibited by the Association, each owner may use property owned by the Association in accordance with the purposes for which it is intended, without hindering, impeding or imposing upon the rights of the other owners, but in accordance with rules and regulations and limitations duly established from time to time by the Association, subject to the right of the Association to charge reasonable admission and other fees for the use of any recreational facility constructed or owned by the Association. All costs and expenses of acquiring, developing, improving, managing, leasing, operating, using, holding, selling and disposing of such real and personal property shall be "common expenses" under these Substituted Covenants payable by the owners and collectible as general or special assessments in the manner described in paragraph 9 herein. Any property acquired by the Association, and any development, improvement, management or lease thereof, shall conclusively be deemed to be for the common use and benefit of the owners if such property is made available by the Association for the use by the owners in the manner for which the same is intended, subject to reasonable rules and regulations and allocation of use and charges and fees of the Association duly established from time to time, irrespective of whether or not any particular owner does in fact use such property.

14. Registration by owner of Mailing Address. Each owner shall register his mailing address with the Association as provided in its Bylaws. Periodic statements for general assessments, notices of special assessments, notices of meetings, and other routine notices from the Association to an owner or to a Homeowners' Organization shall be sent by regular mail, postage prepaid, addressed to (i) the name of the owner at such registered mailing address, or (ii) the name of the Homeowners' Organization at its usual place of business or at the address of its managing agent. Any owner may give written notice to other owners in the same manner. All other notices or demands intended to be served by the Association upon an owner shall be sent by certified mail, postage prepaid, addressed to the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated by the Bylaws of the Association.

15. Prohibited Activities.

(a) No noxious or offensive activities shall be conducted upon or within the Common Area or upon or within any Ownership Unit, nor shall anything be done thereon or therein which may be or may become an annoyance, disturbance or nuisance to owners.

(b) No trailer, boat, boat trailer, camper or camping trailer, tent, mobile home, or other similar structure shall be installed, used or located within EagleRidge Subdivision and outside of a building at any time; except, however, that tents or pavilions may be installed and used for picnics, common events or performances, when approved in advance by the Committee.

(c) No animals, livestock or poultry of any kind shall be raised, bred, or kept within EagleRidge Subdivision, except that dogs and cats may be kept, provided, in all cases, that they are not kept, bred or maintained for any commercial purpose, and provided further that rules and regulations promulgated by any Homeowners' Organization do not prohibit them, and that all dogs and cats must at all times be kept inside buildings or other enclosed areas, or on leashes, and shall not be permitted to run at large.

(d) No refuse, garbage, trash, plant clippings, plant waste, compost, scrap, or debris of any kind shall be kept, stored or allowed to accumulate on any Ownership Unit except within a sanitary structure which is enclosed or otherwise appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pickup. No incinerators shall be kept, maintained or allowed within or upon any Ownership Unit.

(e) No activity shall be conducted and no structure shall be constructed within EagleRidge which is unsafe or hazardous to any person. Without limiting the generality of the foregoing, no firearms shall be discharged within EagleRidge and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within an exterior or interior fireplace designed to prevent the dispersal of burning embers.

(f) Pipes for water, gas, sewer, drainage or other purposes and wires, antennae and other facilities for the transmission or reception of audio or visual signals or electricity and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure or otherwise appropriately screened from view. No exterior radio antenna, television antenna, satellite dish, or other antennae of any type shall be erected or maintained within EagleRidge, except with the prior written consent of the Committee.

(g) No sound or odor shall be emitted from any property within EagleRidge which is noxious or unreasonably offensive to others, except such as may be necessary or concomitant to the activities carried on under any valid license or permit issued by applicable government entities for building or construction purposes, without the approval of the Committee. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security devices used exclusively for security purposes, shall be located or used upon any Ownership Unit except with the approval of the Committee.

(h) There shall be no interference with the established drainage patterns over any property within EagleRidge except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the Committee.

(i) No cesspool, septic tank or other sewage or waste disposal system shall be installed within EagleRidge without the prior written consent of the Committee, except a central sewage disposal collection system installed and maintained by the Mount Werner Water and Sanitation District or other sanitation agency providing sewage disposal services to a significant portion of EagleRidge.

(j) No individual water supply system shall be installed or maintained within EagleRidge unless such system is approved in writing by the Committee. No water wells shall be constructed, drilled or otherwise established within EagleRidge for domestic or irrigation purposes, and in no event shall any water be diverted for any use from Burgess Creek, without the approval of the Committee.

16. VariANCES. The Board of Directors of the Association may in its discretion grant variances and exceptions in writing to the requirements or procedures of paragraphs 4 or 5 above and to the prohibited activities described in paragraph 15 above, when the Board determines that it is appropriate and just to do so after the request for a variance has been submitted in writing by an owner or his agent.

#### 17. Violations; Remedies.

(a) The Association and any aggrieved owner shall have the right of action in equity and at law against any person or entity other than the Association who violates or fails to comply with the provisions of these Substituted Covenants or the Articles of Incorporation, Bylaws, rules or regulations of the Association. If the Association or any aggrieved owner commences any suit in equity or at law against any person or entity other than the Association who violates or fails to comply with the provisions of these Substituted Covenants or the Articles of Incorporation, Bylaws, rules or regulations of the Association, and prevails therein, then such person or entity shall be liable for, and the Association or such aggrieved owner shall recover judgment against such person or entity for, all attorney's fees and costs of discovery and suit incurred by the Association or such aggrieved owner.

(b) Any owner shall have the right of action in equity and at law against the Association if the Association fails to comply with the provisions of these Substituted Covenants or the Articles of Incorporation, Bylaws or rules or regulations of the Association. In no case, however, shall any owner who commences any suit in equity or at law against the Association have any right under these Substituted Covenants to recover judgment against the Association for such owner's attorney's fees or costs of discovery or suit.

18. General Reservations in Declarants.

(a) Right to Select Association Directors. Notwithstanding any other provisions expressly or impliedly to the contrary contained in these Substituted Covenants, the Articles of Incorporation or Bylaws of the Association, Declarants reserve the exclusive right until December 31, 1999, to elect, select and replace from among the owners or persons designated as representatives of organizational members the Board of Directors of the Association. Each Declarant shall have the right to elect or select one Director.

(b) Right to Select Members of the Architectural Control Committee. Notwithstanding any other provisions expressly or impliedly to the contrary contained in these Substituted Covenants, the Articles of Incorporation or Bylaws of the Association, Declarants reserve the exclusive right until December 31, 1999, to select and replace the members of the Architectural Control Committee of the Association. Each Declarant shall have the right to select one member of such Committee.

(c) Right to Erect Signs. Each Declarant reserves until December 31, 1999, a license and right to erect and maintain within the Common Area of EagleRidge one or more signs which comply with applicable governmental regulations, and to relocate and remove same, all in the sole discretion of such Declarant.

(d) Right of Release and Termination. Any Declarant shall have the right and ability to assign or to release and terminate any rights reserved to such Declarant pursuant to this paragraph 18 or paragraph 12 or subparagraphs 19(a) or 19(b) or 19(d) by execution of a document expressing such Declarant's intent to assign or to release and terminate any such right, which document shall be recorded in the real property records of Routt County, Colorado.

19. General Provisions.

(a) Partial Release of Substituted Covenants and Deletion from EagleRidge. Any portion of the Land within EagleRidge may be deleted and excluded from EagleRidge and the Land, within the meaning and intent and restrictions of these Substituted Covenants, if (i) the Board of Directors of the Association unanimously approve of such deletion and exclusion in a writing executed and acknowledged in recordable form and (ii) the Association, the owner of such portion of the Land, and each Declarant who, at the time of such proposed deletion and exclusion, is the owner in fee simple of any Ownership Unit, execute, acknowledge and record in the real property records of Routt County, Colorado, a document stating that a portion of the Land as particularly described in such document is deleted and excluded from EagleRidge and from the Land, and that these Substituted Covenants and any amendments or additions hereto shall not thereafter encumber, restrict or affect such portion of Land. Upon compliance with conditions (i) and (ii) immediately above, and recording of the documents therein generally described, such portion of Land described in such document shall thereafter be deleted and excluded from EagleRidge and the Land and shall not thereafter be encumbered, restricted or affected by these Substituted Covenants or any amendments or additions hereto.

(b) Addition of Property. Any real property, the boundary of which adjoins a boundary of EagleRidge, may be added to the Land and to EagleRidge and be deemed to be a part of EagleRidge, the same as if initially included within the EagleRidge Plat, upon the execution, acknowledgment and recording in the real property records of Routt County, Colorado, of a document signed by the Association, by the owner of such adjacent real property, and by each Declarant who, at the time of such proposed addition of land, is the owner in fee simple of any Ownership Unit, declaring such real property to be and become a part of EagleRidge and subjecting such real property to all of the terms, covenants, benefits, burdens, conditions and restrictions of these Substituted Covenants. Thereafter, the owner or owners of such added property shall be deemed "owners" hereunder, and such added property shall be encumbered by, and entitled to the benefits of, these Substituted Covenants.

(c) Reallocation of Voting Rights. Upon deletion of any portion of the land from, or addition of any real property to, EagleRidge Subdivision as provided in subparagraphs 19(a) and 19(b) above, the voting rights of all owners shall be reallocated in conformance with the provisions of subparagraph 7(c) of these Substituted Covenants to reflect the effects of such deletion or addition.

(d) Duration. These Substituted Covenants shall run with and bind the Land (except for any part thereof deleted and excluded herefrom as provided in subparagraph 19(a) above) and shall inure to the benefit of and be enforceable by the owner of any real property subject to these Substituted Covenants, their respective legal representatives, heirs, successors and assigns, and the Association, for a term of twenty-one (21) years from the date these Substituted Covenants are recorded, after which time these Substituted Covenants shall be automatically extended for successive periods of ten years each unless there has been recorded, prior to the commencement of any such 10-year period, an instrument terminating these Substituted Covenants, which is executed and acknowledged in recordable form by the then owners of at least sixty-seven percent (67%) of the Ownership Units within EagleRidge and, in addition, by each Declarant who, at the time of such proposed termination is an owner in fee simple of any Ownership Unit.

(e) Invalidity. If any of the provisions of these Substituted Covenants or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of these Substituted Covenants, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

(f) Supplemental to Other Law. The provisions of these Substituted Covenants shall be in addition and supplemental to any applicable provisions of Colorado or federal law.

(g) Gender and Number. 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 other genders.



FIRST FEDERAL SAVINGS AND  
LOAN ASSOCIATION OF SOUTHEAST MISSOURI

By: J. Michael McGannon  
President

Date: December 23, 1988

ATTEST

Kenneth L. Hayden  
Secretary

STATE OF MISSOURI )  
                          ) ss.  
COUNTY OF CAPE GIRARDEAU )

The foregoing instrument was acknowledged before me this 23rd day of December, 1988, by J. Michael McGannon, as President, and Kenneth L. Hayden as Secretary, of First Federal Savings and Loan Association of Southeast Missouri, a corporation.

WITNESS my hand and official seal.

Emma Deyer  
Notary Public

My commission expires: 10-31-1990



EMMA DEYER, NOTARY PUBLIC,  
COMMISSIONED WITHIN, AND FOR THE  
COUNTY OF CAPE GIRARDEAU, STATE OF  
MISSOURI.  
MY COMMISSION EXPIRES 10-31 1990

Recorded at 3:55 clock P.M. MAR 29 1989  
Reception No. 377253 Kim Donner, Recorder Routt County, CO

ASSIGNMENT OF DECLARANT RIGHTS

BOOK 639 PAGE 1842

THIS ASSIGNMENT OF DECLARANT RIGHTS is given effective as of December 29, 1988 by FIRST FEDERAL SAVINGS BANK OF ROGERS, ARKANSAS, the address of which is 500 W. Walnut, Rogers, Arkansas, 72756 ("Rogers"), to H.C. BAILLY CONSTRUCTION COMPANY, a Mississippi corporation, the address of which is P. O. Box 1380, Jackson, Mississippi, 39234-1380 ("Bailey").

WHEREAS, Rogers, Bailey and First Federal Savings and Loan Association of Southeast Missouri ("Southeast Missouri"), as joint Declarants, have stated, published and declared that certain "Substituted" Protective Restrictions, Covenants, Limitations, Easements and Approvals for EagleRidge Subdivision," which was recorded on December 30, 1988 at Reception No. 377370 and in Book 639 at Page 812, Routt County records (the "Substituted Covenants"); and

WHEREAS, the Substituted Covenants reserve unto Rogers, Bailey and Southeast Missouri, as Declarants, certain rights as stated, without limitation, in paragraphs 12, 18, 19(a), 19(b) and 19(d) thereof; and

WHEREAS, that certain "Articles of Incorporation of the EagleRidge Property Owners' Executive Association," which was recorded on January 23, 1989 at Reception No. 377840 and in Book 640 at Page 1152, Routt County records (the "Articles"), reserves unto Rogers, Bailey and Southeast Missouri certain rights as stated in Article VII thereof; and

WHEREAS, by that certain "Bill of Sale, Transfer and Assignment," which was recorded on January 10, 1988 at Reception No. 377504 and in Book 640 at Page 479, Routt County records, Rogers has conveyed to Bailey all its right, title and interest in and to any and all real property located within the EagleRidge Subdivision as described by the plat of EagleRidge Subdivision, filed on April 27, 1981 in File No. 8826, Routt County records, as amended by the plat of EagleRidge Subdivision, Filing No. 2, filed on March 13, 1985, at Reception No. 341659, in File No. 9772, Routt County records; and

WHEREAS, Rogers and Bailey desire and intend that Bailey shall succeed to all rights held by Rogers as Declarant rights pursuant to the Substituted Covenants and the Articles.

441-1561

NOW, THEREFORE, in consideration of the dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Rogers does hereby bargain, sell, transfer, assign and convey unto Bailey all rights, title and interest vested in Rogers as Declarant rights by virtue of the Substituted Covenants, including without limitation those rights vested in Rogers pursuant to paragraphs 12, 18, 19(a), 19(b) and 19(d) thereof, and by virtue of Article VII of the Articles.

DATED AND EFFECTIVE as of December 28, 1988.

FIRST FEDERAL SAVINGS BANK OF ROGERS, ARKANSAS

By: Richard K. Murphy  
Richard K. Murphy, President

ATTEST:

Cheryl L. Wilson  
Cheryl L. Wilson, Secretary

STATE OF ARKANSAS )  
                          ) ss.  
COUNTY OF BENZON )

The foregoing instrument was acknowledged before me this 14 day of March, 1988 by Richard K. Murphy as President and by Cheryl L. Wilson as Secretary of First Federal Savings Bank of Rogers, Arkansas.

My commission expires: 4-16-93

Anna Beck Johnson  
Notary Public

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ASSIGNMENT OF DECLARANT RIGHTS

BOOK 667 PAGE 2018

THIS ASSIGNMENT OF DECLARANT RIGHTS is given effective as of October 1, 1991 by Federal Savings and Loan Association of Southeast Missouri ("Southeast Missouri"), to R.C. Bailey Construction Company, a Mississippi corporation ("Bailey").

RECITALS:

A. Southeast Missouri, Bailey and First Federal Savings Bank of Rogers, Arkansas ("Rogers"), as joint Declarants, have stated, published and declared that certain instrument entitled "Substituted Protective Restrictions, Covenants, Limitations, Easements and Approvals for EagleRidge Subdivision," which was recorded on December 30, 1988 at Reception No. 377270 and in Book 639 at Page 812, Routt County records ("the Substituted Covenants").

B. The Substituted Covenants reserve to Bailey and Southeast Missouri, as Declarants, certain rights including, without limitation, as stated in paragraphs 12, 18, 19(a), 19(b) and 19(d) thereof.

C. The certain "Articles of Incorporation of the EagleRidge Property Owners' Executive Association," which was recorded on January 23, 1985 at Reception No. 377840 and in Book 640 at Page 1132, Routt County records ("the Articles"), reserve to Bailey, Rogers and Southeast Missouri certain rights as stated in Article VII thereof.

E. Southeast Missouri has conveyed all interests in the EagleRidge Subdivision which it previously held and it desires and intends that Bailey shall succeed to all rights held by Southeast Missouri as Declarant rights pursuant to the Substituted Covenants and the Articles.

WITNESSETH:

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Southeast Missouri does bargain, sell, transfer, assign and convey to Bailey all rights, title and interest vested in Southeast Missouri as Declarant rights by virtue of the Substituted Covenants, including without limitation those rights vested in Southeast Missouri pursuant to paragraphs 12, 18, 19(a), 19(b) and 19(d) thereof, and by virtue of Article VII of the Articles.

DATED AND EFFECTIVE as of the day and date first written above.

RESOLUTION TRUST CORPORATION  
AS RECEIVER FOR  
FIRST FEDERAL SAVINGS AND LOAN  
ASSOCIATION OF SOUTHEAST MISSOURI

By: James R. Gorman  
James R. Gorman, its attorney-in-fact

**RELEASE AND RELINQUISHMENT OF DECLARANT RIGHTS**

THIS RELEASE AND RELINQUISHMENT OF DECLARANT RIGHTS ("Release") is made by H.C. Bailey Construction Company, a Mississippi corporation ("Declarant").

**RECITALS:**

A. Declarant together with First Federal Savings and Loan Association of Southeast Missouri ("Southeast Missouri") and First Federal Savings Bank of Rogers, Arkansas ("Rogers") stated, published and declared that certain instrument entitled Substituted Protective Restrictions, Covenants, Limitations, Easements and Approvals for Eagleridge Subdivision, recorded December 30, 1988 in Book 639 at Page 1812 of the records of Routt County, Colorado ("the Declaration").

B. The Declaration reserved to Declarant, Southeast Missouri and Rogers certain rights including, without limitation, those stated in paragraphs 12, 18, 19(a), 19(b) and 19(d) of the Declaration (such reserved rights are collectively referred to as "the Reserved Rights").

C. All of the rights under the Declaration held by Southeast Missouri were transferred to Declarant by means of an Assignment of Declarant Rights as recorded in Book 667 at Page 2018 of the records of Routt County, Colorado. All of the rights under the Declaration held by Rogers were transferred to Declarant by means of an Assignment of Declarant Rights as recorded in Book 641 at Page 1863 of the records of Routt County, Colorado.

D. Declarant was dissolved as an active corporation effective as of December 28, 1994 and, as part of the liquidation of its assets, now wishes to terminate, release and relinquish the Reserved Rights.

**WITNESSETH:**

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, Declarant does hereby release, relinquish and terminate all interest which it may hold in, and its rights to exercise, the Reserved Rights.

EFFECTIVE as of the 25th day of March 1992.

H.C. BAILEY CONSTRUCTION COMPANY,  
a Mississippi corporation

By: [Signature]  
RICHARD J. GIVAK, PRES

LAST ACTING BOARD OF DIRECTORS OF H.C. BAILEY CONSTRUCTION COMPANY, a Mississippi corporation dissolved as of December 28, 1994

By: [Signature]

By: [Signature]

By: [Signature]

By: [Signature]

By: [Signature]

**ACKNOWLEDGEMENT:**

STATE OF Texas )  
COUNTY OF Dallas ) ss.

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of July 1995 by Richard J. Givak as President of H.C. Bailey Construction Company, a Mississippi corporation.

Witness my hand and official seal.

My commission expires: 7-6-97



[Signature]  
Notary Public

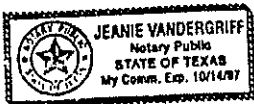
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STATE OF Texas )  
COUNTY OF Dallas ) ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September 1995 by Steve Brown as a member of the Last Acting Board of Directors of H.C. Bailey Construction Company, a Mississippi corporation dissolved as of December 28, 1994.

Witness my hand and official seal.

My commission expires: 10-14-97



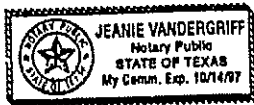
Jeanie Vandergriff  
Notary Public

STATE OF Texas )  
COUNTY OF Dallas ) ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September 1995 by Daniel R. Crain as a member of the Last Acting Board of Directors of H.C. Bailey Construction Company, a Mississippi corporation dissolved as of December 28, 1994.

Witness my hand and official seal.

My commission expires: 10-14-97



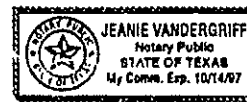
Jeanie Vandergriff  
Notary Public

STATE OF Texas )  
COUNTY OF Dallas ) ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September 1995 by Linda Anthony as a member of the Last Acting Board of Directors of H.C. Bailey Construction Company, a Mississippi corporation dissolved as of December 28, 1994.

Witness my hand and official seal.

My commission expires: 10-14-97



Jeanie Vandergriff  
Notary Public

STATE OF Texas )  
COUNTY OF Dallas ) ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September 1995 by Stan Gorrell as a member of the Last Acting Board of Directors of H.C. Bailey Construction Company, a Mississippi corporation dissolved as of December 28, 1994.

Witness my hand and official seal.

My commission expires: 10-14-97



Jeanie Vandergriff  
Notary Public