

CONDOMINIUM DECLARATION  
FOR  
OUT RUN CONDOMINIUMS

This Condominium Declaration made this 7<sup>th</sup> day of March, 1979, by S & L DEVELOPMENT COMPANY, a Colorado partnership.

I  
STATEMENT OF INTENT AND PURPOSE

1.1 Intention: Declarant is the owner of the real property set forth on attached Exhibit "A" and incorporated herein by reference and intends to provide for condominium ownership of the project under the Condominium Ownership Act of the State of Colorado.

1.2 Purpose: To accomplish this purpose, Declarant executes this Condominium Declaration for OUT RUN CONDOMINIUMS to define the character, duration, rights, duties, obligations and limitations of condominium ownership in the project.

1.3 Declaration: Declarant hereby declares that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the project and shall be binding and accrue to the Declarant, its successors and assigns, and any person acquiring and holding an interest in the project, their grantees, successors, heirs, executors, administrators or assigns.

II  
DEFINITIONS

2.1 Declarant means S & L DEVELOPMENT COMPANY, its successors and assigns.

2.2 Real Property means the real property in the County of Gunnison, State of Colorado, described in Exhibit "A", incorporated herein by reference, together with any additional real property annexed to the project as provided for herein.

2.3 Building means any building constructed on the real property which contains one or more units.

2.4 Project means the real property, the buildings and all improvements and structures thereon, together with all rights, easements and appurtenances belonging thereto.

2.5 Condominium Map means the condominium map for OUT RUN CONDOMINIUMS filed April 4, 1979, bearing reception number 337677 of the records of Gunnison County, Colorado, together with any supplemental maps covering the real property subsequently annexed to the project.

2.6 Unit means an individual air space unit, consisting of enclosed rooms occupying part of the building and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space as said boundaries are shown on the Condominium Map, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a unit insofar as they are necessary for the support or full use and enjoyment of another unit, bearing walls, floors, ceilings and roofs except the interior surfaces thereof, foundations, space heating equipment and central water heating equipment, if any, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the unit. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

2.7 Condominium Unit means a unit, together with an undivided interest in the general common elements and the limited common elements appurtenant thereto.

2.8 Owner means a person, firm, corporation, partnership, association or other entity owning a condominium unit.

2.9 Common Elements means all of the project except the units.

2.10 Limited Common Elements means any common element designated and reserved for the exclusive use by the owner of a particular condominium unit or units.

2.11 General Common Elements means all common elements except limited common elements.

2.12 Association means OUT RUN CONDOMINIUMS HOMEOWNERS ASSOCIATION, a Colorado non-profit corporation, its successors and assigns.

2.13 Mortgage means any real estate mortgage, deed of trust, or a security instrument by which a condominium unit is encumbered.

2.13 Common Expenses mean and include:

- A. Expenses declared common expenses by provisions of this Declaration;
- B. Expenses of administration, operation and management, maintenance, repair or replacement of the general common elements;
- C. All sums lawfully assessed against the general common elements by the Board of Directors; and
- D. Expenses unanimously agreed upon as common expenses by the owners.

### III ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

The project is hereby divided into condominium units as follows:

3.1 Fee simple estates consisting of separately designated condominium units, as shown on the Condominium Map or any supplemental condominium map subsequently annexed to the project.

3.2 Each condominium unit also has an undivided fee simple interest in the general common elements, as determined by the following formula:

The volume of the individual condominium unit, plus the prorata share of the volume of heated limited common elements associated with said unit, as shown on the Condominium Map

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The aggregate of the volume of all units and heated limited common elements of the project shown on the Condominium Map

The fractional undivided ownership of the common elements shall be expressed as a percentage of the whole.

3.3 Subject to the limitations herein contained, any owner shall have the non-exclusive right to use and enjoy the general common elements; any owner shall have the exclusive right to use and enjoy any limited common elements which may be designated for the exclusive use of the unit of such owner and shall have the right to use and enjoy limited common elements designated to such owner's unit and other units, to the exclusion of all units not so designated.

#### IV CONDOMINIUM MAP

4.1 The Condominium Map shall be filed for record prior to the first conveyance of a condominium unit. Such map shall consist of and set forth the following:

- A. The legal description of the surface of the real property;
- B. The linear measurements and locations, with reference to the exterior boundaries of the land, of the buildings and all other improvements built or to be built on said real property;
- C. The elevation plans of the buildings;
- D. The elevations of the unfinished interior surfaces of the floors and ceilings as established on a datum plane, the linear measurements showing the thickness of the perimeter walls of each unit;
- E. The floor plans which shall depict the boundaries (perimeter) of the condominium units, the unit designations and the linear measurements of each unit;
- F. The appropriate designation and identification of all general common elements and limited common elements;

- G. The volume of each unit, together with the volume of said unit's pro-rata share of heated limited common elements, rounded to the nearest 1,000 cubic feet.

4.2 As a part of the Condominium Map, there shall be filed for record a certificate of a registered professional engineer or land surveyor of the State of Colorado, certifying that the improvements as constructed conform substantially to the Map, and that the Map fully and accurately depicts the layout, measurements and location of all of the improvements on the real property; the condominium unit designations, the dimensions of such units and the elevations of the unfinished floors and ceilings.

4.3 In interpreting the Condominium Map or any part thereof, the existing physical boundaries of the units shall be conclusively presumed to be its boundaries.

V  
DESCRIPTION OF CONDOMINIUM UNIT

5.1 Every instrument affecting the title to a condominium unit may describe that condominium unit by its identifying unit number with appropriate reference to the Condominium Map and this Declaration.

5.2 Such method of description shall be as follows:

Condominium Unit \_\_\_\_\_, \_\_\_\_\_ Building, OUT RUN CONDOMINIUMS, according to the Condominium Map thereof and the Condominium Declaration pertaining thereto recorded in Book \_\_\_\_\_ at page \_\_\_\_\_ of the records of Gunnison County, State of Colorado.

5.3 Such description shall be construed to describe the unit, together with the appurtenant undivided interest in the general common elements, the exclusive use of any limited common elements and all rights and limitations of ownership as set forth in this Declaration.

VI  
TITLE

A condominium unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

VII  
TERM OF OWNERSHIP

The separate estate of an owner to a condominium unit as herein created shall continue until revoked in the manner contained in this Condominium Declaration or by operation of law.

VII  
PARTITION NOT PERMITTED

The general common elements shall remain undivided and shall be owned in common by all of the owners of the units and no owner may bring any action for partition or division of the general common elements.

IX  
INSEPARABILITY

No portion of a condominium unit may be separated from any other portion thereof during the period of condominium ownership prescribed herein, and each unit and the undivided interest in the common elements appurtenant to such unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete condominium unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a condominium unit or any portion thereof shall be construed to be a gift, devise, bequest, transfer, encumbrance, or conveyance of the entire condominium unit, together with all appurtenant rights created by law or by this Declaration.

X  
USE OF COMMON ELEMENTS

Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general and limited common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners. No additions or alterations may be made to the common elements without first obtaining the written approval of the board of directors of the Association.

XI  
USE AND OCCUPANCY

The units in the project shall be used and occupied solely for residential purposes by the owner, his family, guests, invitees and tenants, subject to the provisions contained herein. Provided, however, that Declarant reserves the right to own and use units for the purposes and under the terms and conditions set forth in Paragraph 41.5 hereof.

XII  
EASEMENTS FOR ENCROACHMENTS

If any portion of the common elements encroaches or hereafter encroaches upon a unit or units, a valid easement for the encroachment and the maintenance of the same, so long as it exists, shall and does exist. If any portion of a unit encroaches upon the common element, or upon an adjoining unit or units, a valid easement for the encroachment shall and does exist. Such encroachments shall not be considered or determined to be encroachments either on the common elements of the units.

XIII  
TERMINATION OF MECHANIC'S LIEN  
RIGHTS AND INDEMNIFICATION – OTHER LIENS

13.1 Subsequent to the completion of the improvements described on the Condominium Map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit of another owner not expressly consenting to or requesting the same, or against the general common elements, except as to the undivided interest therein appurtenant to the unit of the owner for whom such labor shall have been performed and such materials shall have been furnished. The provisions herein contained are subject to the rights of the Association, as set forth herein.

13.2 Each owner shall indemnify and hold harmless each of the other owners from and against liability or loss arising from the claim of any lien against the condominium unit or any part thereof, of any other owner for labor performed or for materials furnished in work on the first owner's unit. At the written request of any owner, the Association shall enforce such indemnity by collecting from the owner of the unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment.

13.3 Other liens that are permitted by law may be obtained against a unit as the same is defined in paragraph 2.7 hereof. Such lien shall be subject to all of the terms and conditions hereof.

XIV  
SEPARATE ASSESSMENTS AND TAXATION – NOTICE TO ASSESSOR

14.1 Declarant shall give written notice to the Assessor of the County of Gunnison, Colorado, of the creation of condominium ownership of this project, as is provided by law so that each unit and the undivided interest in the common elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation.

14.2 Each condominium unit shall be separately assessed for all taxes and assessments of the State of Colorado, the County of Gunnison, Town of Mt. Crested Butte, or any other political subdivision or district having authority to tax. For the purpose of such assessment, the valuation of the general common elements shall be apportioned among the units in proportion to the fractional interest in the general common elements appurtenant to such unit.

XV  
ADMINISTRATION AND MANAGEMENT

15.1 The administration and management of this project shall be governed by the Articles of Incorporation and the Bylaws of OUT RUN CONDOMINIUMS HOMEOWNERS ASSOCIATION, a Colorado non-profit corporation, herein referred to as the "Association."

15.2 The owner of a condominium unit, upon becoming such owner, shall be entitled and required to be a member of the Association and shall remain a member for the period of his ownership.

15.3 There shall be one membership in the Association for each condominium unit. That membership shall be appurtenant to the condominium unit and shall be transferred automatically by a conveyance of that condominium unit to the new owner.

15.4 No person other than an owner may be a member of the Association and a membership may not be transferred except in connection with the conveyance or transfer of the condominium unit; provided, however, that such membership may be assigned to the holder of a mortgage as further security for the loan secured by the lien of the mortgage holder upon the condominium unit.

## XVI OWNERS' MAINTENANCE RESPONSIBILITY OF UNIT

16.1 The owner of a condominium unit shall keep and maintain the interior of his unit, including without limitation, the interior walls, ceilings, floors, windows, glass and all permanent fixtures and appurtenances thereto in a good and proper state of repair and in a clean, sanitary and attractive condition.

16.2 The owner shall not be deemed to own any utilities running through his unit which serve one or more other units, except as tenants in common with the other owners. No utilities shall be altered, changed, relocated, or disturbed without the prior written consent of the Association.

16.3 Such right to repair, alter and remodel shall carry the obligation to replace any finished materials removed with similar or other types or kinds of finishing materials.

16.4 All fixtures and equipment installed within the unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are referred to as "utilities") enter the unit shall be maintained and kept in repair by the owner thereof.

16.5 An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or utility.

16.6 The owner or owners of units to which the use of any limited common element has been assigned shall keep and maintain the interior of the limited common element in a proper state of repair and in a clean, sanitary and attractive condition in the same manner and under the same restrictions as the interior of his unit as required herein.

XVII  
RESERVATION FOR ACCESS – MAINTENANCE, REPAIR AND EMERGENCIES

17.1 The owner of a unit shall have the irrevocable right to be exercised by the Association, its officers, agents and employees, to have access to each unit and all common elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit.

17.2 Damage to the interior or any part of a unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the common elements or as a result of any emergency repair within another unit at the instance of the Association, or of other owners, shall be an expense of all of the owners; provided, however, that if such damage is the result of the negligence of the owner of the unit, then such owner shall be responsible for all such damages. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

XVIII  
COMPLIANCE WITH PROVISIONS OF DECLARATION,  
BYLAWS OF THE ASSOCIATION

Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto and as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, by the Association on behalf of the owners or, in a proper case, by an aggrieved owner, or for such other relief as may be provided for by resolution of the Association, adopted pursuant to the Bylaws of the Association.

XIX  
AMENDMENT OF DECLARATION

The provisions of this Declaration shall not be amended unless the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the common elements, and all of the holders of any recorded first mortgage covering or affecting any or all units, consent and agree to such amendment by instrument(s) duly recorded in Gunnison County, Colorado; provided, however, that the percentage of the undivided interest in the common elements appurtenant to each unit, as calculated pursuant to the formula expressed in paragraph 3.2 hereof, shall not be changed or amended, except as provided for herein in Section XLII without the approval of one hundred percent (100%) of the unit owners expressed in an amended Declaration duly recorded in Gunnison County, Colorado. Further provided, however, that none of the rights or privileges of the Declarant reserved to it in Section XLI shall be amended without the consent of the Declarant expressed in an amended Declaration duly recorded in Gunnison County, Colorado.



XX  
ASSESSMENT FOR COMMON EXPENSES

The Declarant for each condominium unit owned by it, and each owner of a condominium unit by the acceptance of a deed therefore, shall be deemed to covenant and agree and shall be obligated to pay to the Association all assessments made by the Association for the purposes provided in this Declaration.

XXI  
APPORTIONMENT OF ASSESSMENTS

The assessments and expenses pertaining to the common elements and to the project as a whole shall be apportioned among all owners, in the same percentage as each owner's percentage of ownership of common elements calculated pursuant to the formula in paragraph 3.2 hereof. The limited common elements shall be maintained as set forth in paragraph 16.6 and the owners having exclusive use thereof shall not be subject to any separate charge or assessment therefor.

XXII  
AMOUNT OF ASSESSMENTS

22.1 The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the common elements, which sums may include, among other things, expenses of management, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, trash collection, water and sewer charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency, capital reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the owners.

22.2 The omission or failure of the Association to fix such assessment for any period shall not be deemed a waiver, modification or release of the owners from their obligation to pay the same.

22.3 Notwithstanding any provision contained herein, the cost to repair damages to common elements incurred as a result of the negligence or willful conduct of a unit owner, his guests or invitees, shall be specially assessed against said unit owner.

XXIII  
TIME OF PAYMENT OF ASSESSMENTS

23.1 The assessments of the Association shall be computed and determined on a fiscal year basis.

23.2 Assessments shall be payable monthly in advance on or before the tenth day of each month by the owners of the condominium units.

23.3 The Association shall give written notice to the owners of the condominium units of the annual assessment and shall further prepare and deliver to each owner itemized monthly statements as to the monthly assessment.

23.4 The Association may provide that any assessment shall bear interest at a rate to be determined by the Association if not paid on the due date thereof.

23.5 Any holder of a first mortgage who obtains title to any condominium unit pursuant to the remedies provided for in the mortgage will not be liable for such unit's unpaid assessments which have accrued prior to the acquisition of title by the holder of said first mortgage.

#### XXIV INSURANCE

The Association shall obtain and at all times maintain and keep in full force and effect insurance of the type and kind provided for in the Bylaws of the Association.

#### XXV LIEN FOR NON-PAYMENT OF COMMON EXPENSES

25.1 All sums assessed to any condominium unit and not paid within 30 days from the date of assessment, together with interest thereon as herein provided, shall constitute a lien on such condominium unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such condominium unit except only:

- A. Tax and assessment liens on the condominium unit by any governmental authority.
- B. All sums unpaid on a first mortgage of record, including all unpaid obligatory advances made pursuant to such mortgage.

25.2 To evidence such lien, the Association, by the board of directors, officers or manager, may prepare a written notice of lien setting forth the amount of the assessment, the amount remaining unpaid, the name of the owner of the condominium unit and a description thereof. Such notice shall be signed by the Association and may be recorded in the records of Gunnison County, Colorado. Such liens shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure by the Association in the same manner as a foreclosure of a mortgage. In such foreclosure, the owner shall be required to pay the costs and expenses for such proceedings, the cost and expenses of filing the notice of claim of lien and all reasonable attorneys' fees. The owner shall also be required to pay to the Association the monthly assessments for the unit during the period of foreclosure, and the Association

shall be entitled to a Receiver to collect the same. The Association shall have the power to bid on the unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

25.3 Any encumbrancer holding a lien on a condominium unit may pay but shall not be required to pay the amount secured by such lien, and upon such payment said encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of its encumbrance.

25.4 The Association shall report to any encumbrancer of a condominium unit any unpaid assessments remaining unpaid for more than 30 days after the date of assessment, provided that such encumbrancer shall have made written request therefor.

## XXVI OWNERS' OBLIGATION FOR PAYMENT OF ASSESSMENTS

The amount of the common expenses assessed against each condominium unit shall be the personal and individual debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for such unpaid debt shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No owner may exempt himself from the liability of his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

## XXVII STATEMENT OF ACCOUNT

27.1 Upon payment of a reasonable fee, not to exceed ten dollars, and upon the written request of any owner, prospective owner, holder of a mortgage or prospective holder of a mortgage of a condominium unit, the Association shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessments become due, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

27.2 The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee, not to exceed ten dollars, and upon written request from any such prospective grantee, he shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessments, the date that such assessments become due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. Unless such request for a statement shall be

complied with within ten days of such request, then such requesting grantee shall not be liable for, not shall the unit be conveyed subject to a lien for any unpaid assessments against the subject unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the units by the Declarant.

## XXVIII MORTGAGING A UNIT – PRIORITY

Any owner shall have the right from time to time to mortgage or encumber his interest in a condominium unit by mortgage. A first mortgage shall be one which has first and paramount priority under applicable law and a mortgage imposed against the condominium unit by virtue of the first sale of such unit by the Declarant shall be construed and presumed to be a first mortgage. The owner of a condominium unit may create junior mortgages on the following conditions:

- A. That any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for common expenses, and other obligations created by this Declaration, the Articles of Incorporation and the Bylaws of the Association.
- B. That the holder of any junior mortgage shall release, for the purpose of restoration of any improvements upon the project, all of his right, title and interest in and to the proceeds under insurance policies upon said project wherein the Association is named insured. Such release shall be furnished upon written request by the Association.

## XXIX ASSOCIATION AS ATTORNEY-IN-FACT – AUTHORITY

29.1 This Declaration does hereby make mandatory and does constitute the irrevocable appointment of the Association as attorney-in-fact for the owner of every condominium unit for all purposes with respect to the project upon its damage, destruction or obsolescence.

29.2 The title to any condominium unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or any prior owner shall constitute the appointment of the Association as the owner's attorney-in-fact.

29.3 The Association, as attorney-in-fact, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other document with respect to the interest of the owner of a condominium unit which may be necessary and appropriate to exercise the powers herein granted.

29.4 Repair and reconstruction of the improvements as used in the succeeding paragraphs means restoring the improvements to substantially the same condition in which the

same existed prior to the damage, with each unit and common elements having substantially the same vertical and horizontal boundaries as before.

29.5 The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, or replacement unless the owners and the holders of all first mortgages agree not to rebuild in accordance with the provisions hereafter set forth.

### XXX REPAIR AND RESTORATION

In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and restoration of the improvements.

### XXXI INSURANCE PROCEEDS INSUFFICIENT

31.1 If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than fifty percent (50%) of all of the units, not including real property, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of the insurance and the proceeds of an assessment to be made against all of the owners and their units.

31.2 Such deficiency assessment shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment.

31.4 In addition thereto, the Association as attorney-in-fact shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

- A. For payment of the balance of the lien of any first mortgage;
- B. For payment of taxes and special assessment liens in favor of any governmental authority;
- C. For payment of unpaid common expenses and assessments of the Association;
- D. For payment of junior liens and encumbrances in the order of and to the extent of their priority;

E. The balance remaining, if any, shall be paid to the owner.

### XXXII DECISION NOT TO RE-BUILD

32.1 If more than fifty percent (50%) of all of the condominium units, not including real property, are destroyed or damaged, and if the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements do not voluntarily, within one hundred days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every holder of a first mortgage, the Association shall forthwith record a notice setting forth the fact or facts, and upon the recording of such notice by the Association, the remaining project shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the Articles of Incorporation and the Bylaws of the Association.

32.2 The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the condominium units. Each account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the owner. From each separate account the association as attorney-in-fact shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the unit represented by such separate account.

32.3 Thereafter, each such account shall be supplemented by the appropriate amount of the proceeds derived from the sale of the project. Such apportionment shall be based upon each unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, by the Association as attorney-in-fact, for the same purposes and in the same order as is provided in paragraph 31.4, A through E.

### XXXIII PLAN OF RECONSTRUCTION

33.1 If the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of the holders of all first mortgages, then all the owners shall be bound by the terms and other provisions of such plan.

33.2 Assessments made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment.

33.3 The assessment provided for herein shall be a debt of each owner and a lien on his unit and may be enforced and collected as is provided in paragraphs 25 and 26.

33.4 In addition thereto, the Association as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association as attorney-in-fact, for the same purposes and in the same order as is provided in paragraph 31.4, A through E.

#### XXXIV ADOPTION OF OBSOLESCENCE PLAN

34.1 The owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements may agree that the condominium units are obsolete and adopt a plan for its renewal and reconstruction, which plan shall have the unanimous approval of all holders of first mortgages.

34.2 If a plan for the renewal or reconstruction is adopted, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such a plan for renewal or reconstruction may give written notice to the Association that such condominium unit shall be purchased by the Association for the fair and reasonable market value thereof. The Association shall then have fifteen days within which to cancel such plan. If such plan is not cancelled, then the unit shall be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within sixty days thereafter.

34.3 If the owner and the Association are unable to agree as to the determination of the fair and reasonable market value of the condominium unit, the same shall be submitted to arbitration in accordance with Rule 109 of the Colorado Rules of Civil Procedure as now in effect or as may hereafter be amended.

34.4 The Board of Arbitration shall be appointed in the following manner:

- A. Within ten days after the failure to agree on the fair and reasonable value, the owner shall nominate and appoint in writing, with written notice to the Association, his arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.
- B. Within ten days after the failure to agree on the fair and reasonable value, the Association shall nominate and appoint in writing, with notice to the owner, their arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.
- C. Within ten days after the appointment, the arbitrator for the owner and the arbitrator for the Association shall jointly nominate and appoint a

third arbitrator within the time herein provided, or if the arbitrators appointed fail to nominate and appoint a third arbitrator then and in that event the arbitrator or arbitrators not so nominated and appointed shall be nominated and appointed by a judge of the District Court of Gunnison County, Colorado, upon the application of the party or parties that have properly nominated and appointed their arbitrator.

34.5 The decision of a majority of the Board of Arbitrators shall be the decision of the Board of Arbitrators as to the fair and reasonable market value of the condominium unit.

34.6 The Board of Arbitrators shall render its decision in writing within 30 days from the date the Board of Arbitrators is constituted.

34.7 The owner and the Association agree that they shall be bound and will abide by said decision and that said decision and award may be filed with the Clerk of the District Court of Gunnison County, Colorado, as the basis of a judgment.

34.8 In the event that there are not sufficient licensed real estate brokers in Gunnison County, Colorado to provide the necessary arbitrators, then licensed real estate salesmen of the State of Colorado residing in Gunnison County, Colorado may be used.

34.9 The sale shall be consummated within fifteen days thereafter, and the Association as attorney-in-fact shall disburse such proceeds as provided in paragraph 31.4, A through E.

#### XXXV SALE UPON OBSOLESCENCE

35.1 The owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements may agree that the units are obsolete and that the same should be sold. Such plan must have the unanimous approval of every holder of a first mortgage.

35.2 In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the entire project shall be sold by the Association as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and Bylaws of the Association.

35.3 The sale proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one unit. Each such account shall be in the name of the Association and shall be further identified by the condominium unit designation and the name of the owner. From each separate account, the Association as attorney-in-fact shall use and disburse the total of such accounts, without contribution from one



account to the other, for the same purposes and in the same order as provided in paragraph 31.4, A through E.

### XXXVI PROPERTY FOR COMMON USE

36.1 The Association may acquire and hold for the use and benefit of all of the owners real and personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the owners in the same proportion as their respective interests in the general common elements and shall not be transferable except with a transfer of a condominium unit.

36.2 A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed condominium unit.

### XXXVII RULES AND REGULATIONS

The Association may make reasonable rules and regulations governing the use of units and the common elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations shall be binding upon all owners and the Association may take such action, including judicial action, as may be necessary to enforce compliance with such rules and regulations and to obtain damages for non-compliance to the extent permitted by law.

### XXXVIII CONTROLLING DOCUMENTS

In case of conflict between the Declaration and Articles of Incorporation or By-laws, the Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

### XXXIX MANAGEMENT CONTRACT

Each and every management contract made between the homeowner's association and the manager or managing agent during the period when the Declarant or other developer control the homeowner's association shall terminate absolutely, and in any event no later than thirty days after the termination of control by the Declarant or other developer of the homeowner's association.

### XL

## ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the board of directors of the Association, or by an architectural committee composed of three or more representatives appointed by the board. In the event said board, or its designated committee, fails to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with.

## XLI

### RESERVATION OF DECLARANT'S RIGHTS

41.1 The Declarant specifically reserves unto itself, its successors and assigns, the right to add additional units, together with the common elements associated therewith to the project within ten (10) years of the date of recording of this Declaration. The exercise of the right to add additional units to the project shall be exercised in the manner set forth in Section XLII hereof.

41.2 During the period in which the Declarant may exercise the right to add additional units to the project as reserved in paragraph 41.1 hereof, the Declarant herein reserves unto itself, its successors and assigns an easement through the common elements as may be reasonably necessary for the purposes of exercising said rights.

41.3 During the period in which the Declarant may exercise the right to add additional units to the project as reserved in paragraph 41.1 hereof, the Declarant herein reserves unto itself, its successors and assigns the right to establish and construct utility facilities for the purpose of serving any additional units added to the project, an easement shall exist for the continued use, maintenance and reconstruction of said utility facilities.

41.4 During the period in which Declarant may exercise the right to add additional units to the project as reserved in paragraph 41.1 hereof, its successors or assigns, the right to establish access easements, including public roadways as may reasonably be necessary to provide for access to any portion of the project across the common elements of the project.

41.5 The Declarant hereby reserves unto itself, its heirs, successors or assigns, the right to own and use a number of units, not to exceed two (2), which units shall be identified on the Condominium Map for the purpose of housing management offices or facilities. In addition to management facilities, the Declarant may use said two (2) units or a portion of them for real estate sales purposes.

## XLII ANNEXATION OF ADDITIONAL UNITS

42.1 Declarant's right to add additional units to the project shall be exercised in the following manner:

- A. A Supplemental Condominium Map shall be filed containing the information required in Section IV hereof.
- B. A Supplemental Condominium Declaration shall be executed by the Declarant, its successors or assigns, submitting the real property, together with the units constructed thereon, to the terms of this Declaration and setting forth the revised percentage ownership of the common elements assigned to each unit within the project calculated pursuant to the formula in paragraph 3.2 herein.

42.2 The Declarant's right to add additional units to the project shall be subject to the following limitations and conditions:

- A. The real property which may be added to the project shall be limited to all or a portion of the real property described in Exhibit B attached hereto and incorporated herein by this reference.
- B. All units added to the project shall be constructed using materials and workmanship of equal durability to those of the existing units within the project.
- C. The total number of units which may make up the total project may not exceed eighty two (82).
- D. The right to add additional units to the project reserved unto the Declarant may be revoked or terminated by the recording of a statement to that effect executed by the Declarant, its successors or assigns.

## XLIV ENFORCEMENT

The Association or any owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## XLV GENERAL

45.1 If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any

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such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

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

45.3 Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 7<sup>th</sup> day of March, 1979.

S & L DEVELOPMENT COMPANY, a Colorado partnership

By Rebel Oil Company, Inc.,  
an Oklahoma corporation, general partner,

By R. E. Lee, Jr., President

Charles Phillips, Secretary

By Travelers Real Estate, Inc.,  
an Oklahoma corporation, general partner,

By R. E. Lee, Jr., President

Charles Phillips, Secretary

By Starritt Commercial Corporation, Inc.,  
A Colorado corporation, general partner,

By Lee A. Starritt, President

Roderick E. Landwehr, Secretary

By Gary Starritt Construction Company, Inc.,  
A Colorado corporation, general partner,

By Richard G. Starritt, President

Roderick E. Landwehr, Assistant Secretary

EXHIBIT A

TRACT OF LAND FOR ASPEN AND  
BIRCH BUILDINGS OF OUTRUN CONDOMINIUMS  
0.7673 Acres

A tract of land located in the SW ¼ of the SE ¼ of Section 23, Township 13 South, Range 86 West of the Sixth Principal Meridian, Town of Mt. Crested Butte, Gunnison County, Colorado, said tract described as follows:

Commencing at a point from which the South quarter corner of said Section 23 bears South 00°29' East 209.85 feet;

Thence due East 146.23 feet;

Thence North 09°12' East 261.81 feet;

Thence North 81°51' East 10.64 feet to the point of beginning of the tract herein described;

Thence proceeding around the tract continuing North 81°53' East 223.0 feet to the westerly boundary of Marcellina Lane of said Town of Mt. Crested Butte;

Thence on a curve to the right along said lane boundary 126.81 feet, said curve having a radius of 300.0 feet and a chord which bears North 23°34'02" East 125.865 feet;

Thence leaving said lane boundary North 68°07'00" West 185.78 feet;

Thence South 24°32'51" West 237.57 feet to the point of beginning, containing 0.7673 acres.

Directions are based on a bearing of North 89°38' East between the brass-capped monuments located at the South quarter corner and the Southeast corner of Section 23, Township 13 South, Range 86 West of the Sixth Principal Meridian.

## EXHIBIT B

A tract of land located in the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 23, Township 13 South, Range 86 West, 6<sup>th</sup> P.M., more particularly described as follows:

Commencing at the South quarter corner (brass cap) of said Section 23;  
Thence North  $0^{\circ}29'$  West along the North-south centerline of said Section 23 a distance of 209.85 feet to the point of beginning of the tract herein described;  
Thence proceeding around the tract due East 146.23 feet;  
Thence North  $9^{\circ}12'$  East 93.81 feet;  
Thence North  $9^{\circ}12'$  East 168.0 feet;  
Thence North  $81^{\circ}53'$  East 233.64 feet to the Westerly boundary of Marcellina Lane of said Town of Mt. Crested Butte;  
Thence on a curve to the right along said lane boundary 203.90 feet, said curve having a radius of 300.0 feet and a chord which bears North  $30^{\circ}55'45''$  East 200.0 feet;  
Thence on a curve to the left 36.91 feet to the Westerly boundary of the Crested Butte-Gothic County Road, said curve having a radius of 20.0 feet and a chord which bears North  $14^{\circ}18'08''$  East 31.89 feet;  
Thence along said road boundary North  $27^{\circ}49'26''$  West 203.89 feet;  
Thence North  $21^{\circ}56'$  West 165.69 feet;  
Thence North  $19^{\circ}02'28''$  West 29.19 feet to the Southeast corner of Lot 34 of Chalet Village Addition No. 10; thence South  $81^{\circ}48'$  West along the Southerly boundary of said Chalet Village Addition No. 10 a distance of 222.70 feet to the Northeast corner of the parcel of land for the Ski Jump Condominium;  
Thence South  $0^{\circ}29'$  East 290.40 feet to the Southeast corner of said parcel;  
Thence South  $81^{\circ}48'$  West 151.37 feet to the Southwest corner of said parcel;  
Thence South  $0^{\circ}29'$  East along the Northsouth centerline of said Section 23 a distance of 511.78 feet to the point of beginning, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.