

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

OF

THE ASPEN LEAF VILLAGE CONDOMINIUMS

INDEX

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
THE ASPEN LEAF VILLAGE CONDOMINIUMS

THIS Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration") is made and executed at Cuchara, Huerfano County, State of Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by PANADERO SKI CORPORATION, a corporation organized and existing under the laws of the State of Colorado (hereinafter referred to as the "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property and improvements situate in the County of Huerfano, State of Colorado (hereinafter referred to as the "Property") and more particularly described as:

Tract 10, Panadero Development Filing No. 3; and

WHEREAS, Declarant desires to establish a condominium project on the Property under the Condominium Ownership Act of the State of Colorado, C.R.S. (1973) 38-33-101, et seq. (as amended); and

WHEREAS, Declarant has established a plan (as expressed herein) for the separate fee simple ownership of real property estates, consisting of the residential units, as herein defined, in the buildings and improvements on the Property, together with co-ownership by the individual and the separate owners thereof, as tenants in common, of all of the remaining portions of the property (hereinafter defined and referred to as the "General Common Elements");

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land and shall be a burden upon and a benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property which is subject to this Declaration, their grantees, successors, heirs, personal representatives, or assigns, all as hereinafter contained in the following paragraphs numbered 1 through 32, inclusive, and any amendment or modification thereto:

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

(a) "Unit" means the fee simple interest and title in and to an individual air space which is contained in an enclosed room or rooms occupying all or part of a floor or floors in a Building, as hereinafter defined. Each Unit is shown on the Map, as hereinafter defined, and is identified thereon with a number. The exact boundaries of a Unit are the interior unfinished surfaces of such walls, floors and ceilings which mark the perimeter boundaries thereof and, where found along such walls, floors and ceilings, the interior surfaces of windows and doors in their closed position. The Unit includes the portions of a Building so described and the air space so encompassed, together with all fixtures and improvements therein contained, but does not include any General Common Elements, as hereinafter defined, which may be located within a Unit.

(b) "Owner" means the Person or Persons, as hereinafter defined, including the Declarant, who holds a real property interest in a Unit together with an undivided real property interest in the General Common Elements, as hereinafter defined, in the percentage specified and established in this Declaration, as set forth on Exhibit 1, attached hereto and incorporated herein.

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

Without limiting the generality of the foregoing, the following are included as General Common Elements:

- (i) all of the land and easements which are part of the Property;
- (ii) all portions of the Property not located within any Unit;
- (iii) all foundations, columns, girders, beams and supports of a Building, the exterior walls of a Building, the main or bearing walls within a Building, the main or bearing sub-flooring and the roofs of a Building;
- (iv) all deck areas, porches, balconies, cabanas, and parking spaces (subject to specific assignment for individual Owner use as Limited Common Elements, as hereinafter defined and provided);
- (v) all entrances, exits, halls, corridors, load-bearing walls within a Unit, elevators, driveways, lobbies, lounges, garden or landscaped areas, conference rooms, storage space, mail room, stairs, stairways and fire escapes, if any, not within any Unit;
- (vi) swimming pool, sun deck, tennis courts, sauna bath, steam rooms, whirlpools, party room, exercise room, or any other recreational areas on the Property;
- (vii) all utility, service and maintenance rooms, space, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, the entire drainage system from the point of entry through the various floors or perimeter walls of the Units, heating, refrigeration, air conditioning, incineration, or similar utility used for service or maintenance purposes, including but not limited to furnaces, tanks, boilers, pumps, motors, fans, compressors, vents, and fixtures, apparatus, installations and facilities of all kinds and types;
- (viii) all rooms or premises for the lodging or housing of managers, custodians or persons in charge of or employed to handle, supervise, operate and maintain the Project, if any; and
- (ix) all other parts of the Project in common use and necessary or convenient to the existence, maintenance and safety of the Project.

(d) "Association" means The Aspen Leaf Village Condominium Association, Inc., a Colorado corporation not for profit, its successors and assigns, the Articles of Incorporation and By-Laws of which, as hereinafter defined, along with this Declaration, shall govern the administration of the Project; the members of the Association shall be all of the Owners of the Units in the Project.

(e) "Building" means any one or all of the building improvements erected within the Project.

(f) "Common Expenses" means and includes:

- (i) all sums lawfully assessed against the Owners by the Association;
- (ii) expenses of administration, maintenance, operation, repair or replacement of the Common Elements, as hereinafter defined;
- (iii) expenses declared Common Expenses by provisions of this Declaration and the By-Laws; and
- (iv) expenses agreed upon as Common Expenses by a majority vote of the Owners, representing an aggregate ownership interest of fifty-one percent (51%), or more, of the General Common Elements.

(g) "Limited Common Elements" means those General Common Elements which are reserved for the use of the Owners of certain Units to the exclusion of the others. As used herein, the term "Unit" shall mean and include the Limited Common Elements appurtenant to such Unit, unless the context otherwise dictates.

(h) "Person" means an individual, corporation, partnership, trustee, joint venture, or any other legal entity.

(i) "Mortgage" means and includes any mortgage, deed of trust or other assignment or security instrument creating a lien on or security interest in any Unit, which document has been recorded in the office of the Recorder, County of Huerfano, Colorado; "First Mortgage" means any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the records of the Recorder, Huerfano County, Colorado, having priority of record over all other recorded liens

except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments); and "Mortgagee" shall include any holder, grantee, beneficiary or assignee of a Mortgage.

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

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

(l) "Managing Agent" means the Person employed by the Board to perform the day-to-day managerial, administrative and operational functions of the Project.

(m) "By-Laws" means the By-Laws of the Association.

(n) "Articles" means the Articles of Incorporation of the Association.

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

(p) "Common Elements" means the General Common Elements and the Limited Common Elements.

(q) "Declarant" means Panadero Ski Corporation, a Colorado corporation.

(r) "Declaration" means this Declaration of Covenants, Conditions and Restrictions of The Aspen Leaf Village Condominiums, as amended from time to time.

2. MAP. There shall be filed for record in the office of the Recorder, County of Huerfano, Colorado, a map, hereinafter referred to as the "Map", which Map may be filed in whole or in part and if filed in part, shall be supplemented, on which shall be depicted:

(a) The legal description of the surface of the Property;

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

(c) Floor plans and elevation plans of the Buildings, showing the location, the designation and the linear dimensions of each Unit, and of all of the Limited Common Elements; and

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

The Map, and any supplements thereto, shall contain a statement of a land surveyor registered in the State of Colorado certifying that the Map fully and accurately depicts the layout, measurements and location of all of the improvements, the Unit designations, the dimensions of such Unit and the elevations of the floors and ceilings. Declarant hereby reserves unto itself and the Association, the right, from time to time, without the consent of any Owner being required, to amend the Map and supplements thereto, in order to conform the Map to the actual location of any of the constructed improvements, to establish, vacate and relocate outside the Buildings, utility easements, access easements, cabanas, garages and parking spaces, and to establish and designate certain General Common Elements as Limited Common Elements.

3. DIVISION INTO UNITS. The Project is hereby divided into 60 Units, each consisting of a separate fee simple estate, and an appurtenant undivided fee simple interest in the General Common Elements. The undivided interest in the General Common Elements which is appurtenant to each of the Units shall be as set forth on Exhibit 1, attached hereto and incorporated herein. As used herein, the term "Unit" shall mean and include the undivided fee simple interest in the General Common Elements appurtenant to such Unit, unless the context otherwise dictates,

4. RIGHT TO COMBINE UNITS. Declarant hereby reserves the right physically to combine all or part of the area or space of one Unit with all or part of the area or space of one or more adjoining Units; provided, however, that Declarant Shall not exercise said right without the written consent of any Owner and any

Mortgagee having an Interest in said Units. In the event of any such physical combining of Units to create a single Unit, such combined Unit shall also include the combining of the fixtures and improvements and of the undivided interest in Common Elements appurtenant to the Units so combined. Declarant reserves the right to designate and convey to any purchaser of any such combined Unit, as additional Limited Common Elements appurtenant thereto, any walls, floors, or other structural separations between the Units so combined, or any space which would be occupied by such structural separations but for the combination of such Units; provided, however, that such walls, floors or other structural separations or such space shall automatically become General Common Elements if the combined Units become subject to separate ownership in the future. This reserved right in Declarant shall terminate upon the conveyance of all of the Units within the Project to third party purchasers.

5. LIMITED COMMON ELEMENTS. Subject to the definition thereof, the Limited Common Elements shall be identified on the Map.

(a) Balconies. Any balcony which is accessible from, associated with and which adjoins a Unit and is identified as a Limited Common Element on the Map shall, without further reference thereto, be used in connection with such Unit to the exclusion of the use thereof by the other Owners of the General Common Elements, except by invitation.

(b) Parking. The numbered parking spaces shown on the Map as Limited Common Elements may be conveyed or assigned by the Declarant to any Owner, and by such Owner to any other Owner; and as conveyed and assigned to an Owner such parking spaces shall be deemed to be Limited Common Elements to be used in connection with the Unit of the Owner to whom conveyed or assigned to the exclusion of the use thereof by the other Owners of the General Common Elements, except by invitation; subject, however, to the subsequent detachment thereof from such Unit and the conveyance or assignment of such parking space to a different Owner. Until the initial conveyance or assignment of each parking space by the Declarant to a specific Owner, such parking spaces are reserved for the exclusive use of the Declarant.

6. INSEPARABILITY OF A UNIT. An Owner's undivided interest in the General Common Elements shall not be separated from the Unit to which it is appurtenant and such interest shall be deemed to be conveyed or encumbered with the Unit even though the interest is not expressly mentioned or described in a deed, Mortgage, or other instrument.

7. DESCRIPTION OF A UNIT.

(a) Every contract for the sale of a Unit written prior to the filing for record of the Map and this Declaration may legally describe a Unit by its identifying Unit number designation followed by the words "The Aspen Leaf Village Condominiums", with further reference to the Map thereof to be filed for record and this Declaration to be recorded. Upon recordation of the Map and this Declaration in the office of the Recorder of Huerfano County, Colorado, such description shall be conclusively presumed to relate to the therein described Unit.

(b) The legal description of a Unit shall be by its identifying Unit number together with a reference to the Map and this Declaration, in the following form:

Unit \_\_\_\_\_, The Aspen Leaf Village Condominiums, according to the Map thereof filed for record in accordance with and subject to the Declaration of Covenants, Conditions and Restrictions of The Aspen Leaf Village Condominiums recorded \_\_\_\_\_, 19\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the records in the office of the Recorder of the County of Huerfano, State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit, but also the General Common Elements and the right to the use of the Limited Common Elements appurtenant to such Unit. Subject to the easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration, each such description shall be construed to include a non-exclusive easement for ingress and egress throughout, and for the use of, the General Common Elements which are not Limited Common Elements; and the right to the appropriate

and exclusive use of the appurtenant Limited Common Elements.

(c) The reference to the Map and Declaration in any instrument shall be deemed to include any and all supplements or amendments to the Map and Declaration, without specific reference thereto.

8. NO PARTITION. The General Common Elements shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the General Common Elements. Similarly, no action shall be brought for the physical partition of a Unit between or among the Owners thereof. Each Owner hereby expressly waives any and all such rights of physical partition he or she may have by virtue of the ownership of a Unit. No Unit shall ever be subject to time share or time interval ownership.

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

10. TITLE. A Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any real property estate or tenancy relationship recognized under the laws of the State of Colorado.

11. CERTAIN WORK PROHIBITED.

(a) No Owner shall undertake any work in his Unit which would jeopardize the soundness or safety of the Project, reduce the value thereof or impair an easement or hereditament thereon or thereto without the unanimous vote of all the other Owners first having been obtained. Structural alterations shall not be made by an Owner to the Building, nor alterations in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from the Buildings without the prior written consent of the Board of Directors first having been obtained.

(b) No Owner shall cause or permit anything to be placed on the outside walls of the Buildings and no sign, awning, canopy, shutter, or antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Board.

12. LIENS AGAINST UNITS - REMOVAL FROM LIEN - EFFECT OF PART PAYMENT.

(a) Subsequent to the completion of the improvements shown on the Map, liens or encumbrances shall only arise or be created against each Unit' and the percentage of undivided interest in the General Common Elements appurtenant to the Unit, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel of real property subject to individual ownership. Labor performed or materials furnished, with the consent or at the request of an Owner or his agent shall not be the basis for the filing of a lien pursuant to law against the Unit or other property of another Owner not expressly consenting to or requesting the same. Each Owner hereby gives express consent to the Association, the Managing Agent or the Board of Directors to make emergency repairs. Labor performed or materials furnished for the General Common Elements, if duly authorized by the Association, the Managing Agent, or the Board of Directors in accordance with the Declaration or By-Laws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each of the Units.

(b) Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from the claim of any lien against the Unit of the indemnified Owner, or any part thereof, for labor performed or for materials furnished in work on the Indemnifying Owner's Unit. At the written request of any Owner, the Association shall enforce each indemnity by collecting from the Owner of the Unit on which the labor was performed or to which the materials were furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorneys' fees. If not promptly paid, the Association may proceed to collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.



13. USE AND OCCUPANCY OF UNITS. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used for residential purposes only. No Unit shall be used at any time for any business or commercial activity, except as follows: (i) the Owner thereof may lease or rent such Unit for private residential purposes, including short-term or hotel purposes; the Owner shall remain primarily responsible for compliance by all occupants and tenants of the Unit with the Declaration, the By-Laws, and any rules and regulations that may be adopted by the Association; no less than the entire Unit shall be leased at any one time; all leases, except hotel rental leases, shall be in writing and shall provide that the terms and provisions of the lease and the conditions of occupancy thereunder by all tenants shall be subject in all respects to the Declaration, the By-Laws and said rules and regulations and that any failure by the tenants to comply with the terms of such documents shall be a default under the lease; (ii) Declarant or its nominee may use any Unit owned by Declarant as a model or sales unit, or as a business, sales or construction office, or for storage, until all Units owned by Declarant are sold; (iii) the Association shall have the right but not the obligation to purchase and own any Unit for storage, recreation or conference areas, or any other use which the Association determines is consistent with the operation of the Project; (iv) the Association and the Managing Agent may maintain one or more offices within the General Common Elements.

14. USE OF GENERAL AND LIMITED COMMON ELEMENTS. Each Owner may use the appurtenant General and Limited Common Elements in accordance with the purposes for which they are intended, so long as such use does not hinder or encroach upon the lawful rights of the other Owners. The Association may adopt rules and regulations governing the use of General and Limited Common Elements, but such rules and regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of a deed to a Unit or other instrument of conveyance or assignment agrees to be bound by any such rules and regulations, adopted prior or subsequent to such acquisition.

15. VARIOUS RIGHTS AND EASEMENTS.

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

(b) Association Rights. The Association, the Board and the Managing Agent shall have a non-exclusive right and easement to make such use of and to enter into or upon the General Common Elements, the Limited Common Elements and each Unit as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration.

(c) Owner's Easement for Access, Support and Utilities. Each Owner shall have a non-exclusive easement across the General Common Elements for access between his Unit and the public roads and streets adjacent to the Project. In addition, each Owner shall have a non-exclusive easement in and over the General Common Elements, including the General Common Elements within the Unit of another Owner, for horizontal and lateral support of the Unit, and for such utility services as may be available to that Unit including water, sewer, gas, electricity, heat, air conditioning, telephone and television service.

(d) Easements for Encroachments. If any part of the General Common Elements encroaches or shall hereafter encroach upon a Unit, the Association shall have an easement for such encroachment and for the maintenance of those General Common Elements. If any part of a Unit encroaches or shall hereafter encroach upon the General Common Elements, or upon another Unit, the Owner of the encroaching Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on a Unit.

(e) Easements in Units for Repair, Maintenance and Emergencies. The Association, Managing Agent and each Owner shall have an easement, which may be exercised for any Owner by the Association or the Managing Agent, as the Owner's agent, for access through each Unit to all General Common Elements, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Unit. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or

replacement of any of the General Common Elements, or as a result of emergency repairs within another Unit, at the instance of the Association, shall be a common expense of all of the Owners. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from actions taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged Improvements shall be performed to place said improvements in substantially the same condition in which they existed prior to the damage.

(f) Easements Deemed Appurtenant. The easements, uses and rights herein created for an Owner shall be appurtenant to the Unit of that Owner and all instruments affecting title to a Unit shall be deemed to grant and reserve the easements, uses and rights provided for herein, without specific reference thereto.

16. OWNERS' MAINTENANCE RESPONSIBILITY. For purposes of maintenance, repair, alteration and remodeling, an Owner shall own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit and the Unit's doors and windows. The Owner shall not own lines\* pipes, wires, conduits or systems running through his Unit which serve one or more other Units, except as a tenant in common with the other Owners. Such right to maintain, repair, alter and remodel shall carry the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in good repair and in a clean, safe, attractive and slightly condition the interior of his own Unit, including the fixtures, doors and windows thereof and the improvements affixed thereto, and such other items and areas as may be required in this Declaration, the By-Laws and the rules and regulations adopted by the Association. An Owner shall maintain and keep in a neat and clean condition the balcony adjoining such Owner's Unit, if any, which area is shown on the Map as a Limited Common Element appurtenant to such Owner's Unit. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Association may fulfill the same and charge such Owner therefor. Any expense incurred by an Owner under this paragraph shall be the sole expense of said Owner.

17. COMPLIANCE WITH PROVISIONS OF DECLARATION, ARTICLES AND BY-LAWS OF THE ASSOCIATION. Each Owner shall comply strictly with, and shall cause each of his Guests to comply strictly with, all of the provisions of this Declaration and the Articles and By-Laws of the Association, and the decisions, rules, regulations and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees. Any such action may be filed and maintained by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

18. THE ASSOCIATION.

(a) General Purposes and Powers. The Association through the Board of Directors or a Managing Agent shall perform functions and hold and manage property as provided in this Declaration to further the interests of the Owners. The Association shall have all powers reasonably necessary to effect such purposes.

(b) Membership and Voting. The Owner of each Unit is hereby a member of the Association. Said membership is appurtenant to the Unit of said Owner and shall pass with fee simple title to the Unit. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all those Owners as defined in the Declaration with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Unit in which they hold the interest required for membership. When more than one (1) person holds such interest in any Unit, all such persons shall be Members. The vote for any such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Unit.

Class B. The Class B membership shall be the Declarant as defined in the Declaration. The Class B membership shall be entitled to four (4) votes for each Unit in which it holds the interest required for membership, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) on July 1, 1985.

No Member shall in any event be entitled to vote with respect to a Unit in which any assessment with respect to such Unit is unpaid and in arrears for a period of thirty (30) days or more at the time of such meeting, or action without a meeting.

(c) Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an Executive Committee, or to a Director or Managing Agent for the Association. There shall be not less than three (3) members of the Board of Directors, the specific number to be set forth from time to time in the By-Laws, all of whom shall be Owners or residents of a Unit, provided, however, that any natural person 18 years of age or older may be nominated as a candidate to such office by Declarant so long as Declarant is the owner of a Unit. All Directors shall be elected by the Owners except that until the first annual meeting of the members of the Association, the members of the Board of Directors shall be appointed by Declarant and named in the Articles.

(d) By-Laws and Articles. The purposes and powers of the Association and the rights and obligations with respect to Owners' set forth in this Declaration may and shall be amplified by provisions of the Articles and By-Laws of the Association.

19. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

(a) Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the General Common Elements to permit the Association to fulfill its duties and obligations and to exercise its rights hereunder, to deal with the Project upon its destruction or obsolescence as hereinafter provided and to grant utility easements through any portion of the General Common Elements. The acceptance by any Person of any interest in any Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereafter. Notwithstanding any other provision of this Declaration, unless the first Mortgagee, if any, of each Unit has given his prior written approval, the Association shall not be empowered or entitled to:

- (i) by act or omission seek to abandon or terminate the Project;
- (ii) partition or subdivide any Unit;
- (iii) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the Common Elements; or
- (iv) use hazard insurance proceeds for loss to the improvements in the Project for other than repair, replacement or reconstruction of such improvements.

(b) General Common Elements. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the General Common Elements, except as is provided for in Paragraph 16 herein. Without limiting the generality of the foregoing, said obligation shall include the keeping of such General Common Elements in good, clean, attractive, safe and sanitary condition, order and repair; removing from the General Common Elements snow and any other materials which might impair access to the Project; keeping the Project safe, attractive and desirable; and making all necessary or desirable alterations, additions, betterments or improvements to or on the General Common Elements.

(c) Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interests of

all, some or any Owners of Units on a self-supporting, special assessment or common assessment basis.

(d) Professional Management. The Association shall obtain and may pay for the services of a professional Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which the Association contracts.

(e) Labor and Services. The Association (i) may obtain and pay for legal and accounting services necessary in connection with the operation of the Project or the enforcement of this Declaration; and (ii) may arrange with others to furnish power, water, trash collection, security, sewer and other services desired by the Owners.

(f) Property of Association. The Association may acquire and hold and encumber property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each Owner's family and Guests may use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interests in the General Common Elements. A transfer of a Unit shall convey to the transferee ownership of the transferor's beneficial interest in and to such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Unit by foreclosure and sale shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Unit.

(g) Association Right to Lease and License General Common Elements. Subject to the easement rights of the Owners, the Association shall have the right to lease, license or permit the use of, by less than all Owners or by nonowners as the Association may determine, any portion of the General Common Elements or any Unit owned by the Association (which Unit may be purchased from the Declarant). The rights granted to the Association in this subparagraph shall only be used in the best interests of the Owners.

(h) Mortgagee Inspection. Each first Mortgagee of a Unit shall have the right to examine the books and records of the Association at any reasonable time and the Mortgagee may receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association. The Association shall notify by mail each first Mortgagee of any proposed amendment of the Association's Articles of Incorporation or By-Laws or any change in the Association's Managing Agent at least ten (10) days prior to the effective date of such amendment or change. Any Mortgagee shall be entitled to written notice by mail of all Association meetings and will be permitted to designate a representative to attend all such meetings. Any Mortgagee that desires to receive notices as herein provided, shall notify the Association that it has become a Mortgagee and furnish a true copy of its recorded Mortgage and its correct mailing address.

(i) Enforcement by Association. The Association may suspend any Owner's voting right or rights to use the General Common Elements for any periods during which such Owner fails to comply with the Association's rules and regulations, or with any other obligations under this Declaration or the By-Laws. The Association may also take judicial action to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance.

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

## 20. ASSESSMENT FOR COMMON EXPENSES.

(a) All Owners, Including Declarant, shall be obligated to pay the assessments imposed by the Board of Directors to meet the estimated common expenses. Assessments shall be made pro rata according to each Owner's percentage of interest in and to the General Common Elements. Assessments attributable to Units owned by

Declarant that have never been occupied shall be abated, and not subject to assessment, while the same remain unoccupied and are held by Declarant for sale. Except as hereinabove provided, the Limited Common Elements shall be maintained as General Common Elements and Owners having exclusive use thereof shall not be subject to any special charges or assessments.

(b) Assessments for the estimated Common Expenses shall be due monthly, in advance, on the first day of each month. The Managing Agent or Board of Directors shall from time to time prepare and deliver or mail to each Owner an itemized statement showing the various estimated or actual expenses for which the assessments are made.

(c) Assessments for Common Expenses shall be based upon such sum as the Managing Agent or Board of Directors shall from time to time determine is to be paid to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements, which sum may include, among other things: expenses of management; taxes and special assessments, until separately assessed; premiums for insurance of the types and kinds provided for in Paragraph 23 hereafter; landscaping and care of grounds and recreational facilities; common lighting, heating, air conditioning and other utility services; repairs, maintenance, cleaning and renovations; trash collections; elevator service; security services; wages, water charges, legal and accounting fees; management fees; capital expenditures; expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration; deficit remaining from a previous period; reserves for contingencies and periodic charges; and other costs and expenses relating to the General Common Elements.

(d) The Managing Agent or Board shall establish, out of such monthly assessments, a contingency or reserve fund for the repair, replacement and maintenance of those General Common Elements that must be replaced periodically. The omission or failure of the Managing Agent or the Board of Directors to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

21. ASSESSMENT RESERVES. The Association and any Mortgagee may require an Owner, other than Declarant, to deposit in cash with the Association and such Mortgagee a sum not exceeding three (3) times the amount of the estimated monthly common assessment, which sum shall be held, without interest, by the Association or such Mortgagee as a reserve which may be used, in the event of default, for paying such Owner's monthly common assessment and, in the case of the Association, for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment of the monthly common assessment as the same comes due. Upon transfer of the Unit, the unused portion of the assessment reserve, after all charges and sums due from the Owner have been paid in full, shall be refunded.

22. ADDITIONS, ALTERATIONS AND IMPROVEMENTS ~ GENERAL AND LIMITED COMMON ELEMENTS. The Association shall not authorize capital additions, alterations or improvements, of or to the General Common Elements requiring an expenditure in excess of One Thousand Dollars (\$1,000.00) per Unit in any one calendar year, without prior approval by a majority of the Owners, except in the event of an emergency. The limitations set forth in the preceding sentence shall not apply to any expenditures made by the Association for maintenance and repair of the Common Elements, as set forth in Paragraph 19 hereof, or for repair in the event of damage, destruction or condemnation, as provided in Paragraphs 29 and 30 hereof.

23. INSURANCE.

(a) The Association or the Managing Agent shall obtain and keep in force at all times, to the extent available, policies of insurance covering at least the risks set forth below. The Board of Directors or Managing Agent shall not obtain any policy where: (i) under the terms of the insurance company's charter, by-laws or policy, contributions or assessments may be enforced or made against the mortgagor or Mortgagee of the premises; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by its board of directors, policy holders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or the mortgagor from collecting insurance proceeds.

(b) The types of coverage's to be carried and risks to be covered are as follows, to-wit:

(1) Fire insurance shall be obtained with extended coverage and all risk endorsements. Said casualty insurance shall insure any property comprising the Common Elements together with all equipment contained therein, and all property owned by the Association, whether real or personal, all in an amount equal to the full replacement value thereof, without deduction for depreciation. All policies shall contain a standard noncontributory mortgage clause in favor of each first Mortgagee of a Unit, which shall provide that the loss, if any, thereunder shall be payable to The Aspen Leaf Village Condominium Association, Inc. for the use and benefit of Mortgagees, as their interests may appear.

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

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

(4) Fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery, including any persons who serve the Association without compensation.

(c) All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any act of an Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days' prior written notice to all of the insured's, including first Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to all first Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance may be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Unit number designation) and all first Mortgagees.

(d) Prior to obtaining any policy of fire insurance or renewal thereof, the Board or Managing Agent shall obtain an appraisal from a duly qualified real estate or Insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be carried pursuant to the provisions of this insurance paragraph. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

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

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

(g) In the event that there shall be any damage, destruction, or loss to the General Common Elements which exceeds \$10,000.00, notice of such damage or loss shall be given by the Association to all first Mortgagees, known to the Association under the provisions of Paragraph 19(h) hereof, within ten (10) days after the occurrence of such event.

(h) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the Interest of any particular Owner:

(1) who is guilty of a breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of that portion of the insurance premium applicable to that Owner's interest; or

(2) who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy;

but the Insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

24. LIEN FOR NONPAYMENT OF COMMON EXPENSES.

(a) All sums assessed to a Unit by the Association but unpaid shall constitute a lien on such Unit.

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

(c) To evidence such lien, the Board of Directors or Managing Agent shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner and a description of the Unit. Such notice shall be signed by one officer of the Association, or one member of the Board of Directors or by the Managing Agent and may be recorded in the office of the Recorder of the County of Huerfano, Colorado. Such lien may be enforced by foreclosure thereof against the defaulting Owner's Unit by the Association in like manner as foreclosure of a mortgage on real property, upon the recording of the notice provided for above. With respect to any such lien, the Owner shall be required to pay all costs and expenses and all reasonable attorneys' fees for enforcement thereof. The Managing Agent or Board of Directors shall have the power to bid on the Unit at the foreclosure sale, and to acquire and thereafter to hold, lease, mortgage and convey such Unit following the Owner's period of redemption from the foreclosure sale, which period shall be as provided by law or as Ordered by the Court.

(d) Any Mortgagee of a Unit may pay any unpaid Common Expenses payable with respect to such Unit, and upon such payment, such Mortgagee shall have a lien on such Unit for the amounts paid of the same rank and priority as the lien of the Mortgagee.

(e) The Association shall report to the first Mortgagee of a Unit, known to the Association under Paragraph 19(h) hereof, any assessments remaining unpaid for longer than ninety (90) days after the same are due and any other default of an Owner which is not cured within ninety (90) days.

25. OWNER'S OBLIGATIONS FOR PAYMENT OF ASSESSMENTS. The amount of the Common Expenses assessed against each Unit shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses, plus costs of suit and the Association's reasonable attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing same. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit.

26. LIABILITY FOR COMMON EXPENSES UPON TRANSFER OF UNIT IS JOINT.

(a) Upon payment of a reasonable fee, and on written request from any Owner, or from any Mortgagee of a Unit, the Association, by its Managing Agent or Board of Directors, shall issue a written statement setting forth: (1) the amount of the unpaid Common Expenses, if any, with respect to the subject Unit; (2) the amount of the current monthly assessment; (3) the date that such assessment becomes due; (4) any credit for advanced payments for prepaid items, including but not limited to insurance premiums; and (5) the amount of any other charges or sums due and owing to the Association by such Owner. Such statement shall be conclusive upon the Association in favor of all Persons and Mortgagees who rely thereon in good faith.

(b) The grantees of a Unit (except a first Mortgagee who acquires a Unit by foreclosure or a deed in lieu of foreclosure) shall be jointly and

severally liable with the grantors for all unpaid assessments and any other charges or sums due and owing to the Association by said grantors, including the grantors' share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantees' right to recover from the grantors the amounts paid by the grantees therefor. The provisions contained in this paragraph shall not apply upon the initial transfer of the Units by Declarant.

27. MORTGAGING A UNIT; PRIORITY. Any Owner shall have the right from time to time to mortgage or encumber his or her Unit by deed of trust, mortgage or other security instrument. The Owner of a Unit may create junior Mortgages (junior to the lien, deed of trust or other encumbrance of the first Mortgagee) on the Unit subject to the following conditions: (1) any such junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Common Expenses, and other liabilities created by this Declaration, and the By-Laws of the Association; and (2) the Mortgagee under any junior Mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of its right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were obtained and placed upon the Unit or the Project by the Association. Such release shall be furnished by any junior Mortgagee, and until furnished, such junior Mortgage shall not be deemed to be a permitted Mortgage under this Declaration.

28. RESTRICTIVE COVENANTS AND OBLIGATIONS.

(a) No Imperiling of Insurance. No Owner or Guest shall do anything or cause anything to be kept in or on the Project which might result in an increase in the premiums of insurance obtained for the Project or which might cause cancellation of such insurance.

(b) No Violation of Law. No Owner or Guest shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or either validly imposed requirement of any governmental body.

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

(d) No Unsightliness. No unsightliness shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, and in order to create a uniform general appearance, nothing shall be hung or placed upon any part of the General Common Elements, including areas which are Limited Common Elements, and all window treatments or coverings shall be lined or otherwise treated so that only a white nonreflective color shall be visible through the windows of each Unit when viewing the exterior of the Project; and nothing shall be placed on or in windows or doors of Units, which in the opinion of the Board of Directors would or might create an unsightly appearance.

(e) Restriction on Animals. No animals, livestock, reptiles or birds shall be kept on any part of the Project, except that domesticated dogs, cats or birds may be kept by an Owner in his or her Unit, subject to all animal ordinances and rules and regulations promulgated by the Association in regard thereto, and provided that they are not kept for any commercial purposes. An Owner is responsible for any damage caused by such animal(s). No animals shall be allowed to remain tied or chained to any balconies, or other part of a Unit and any such animal(s) so tied or chained may be forthwith removed by the Association or its agents, without notice.

(f) Restriction on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Association or Declarant.

(g) No Violation of Rules. No Owner and no Owner's tenants or Guests shall violate the rules and regulations adopted from time to time by the Associa-



tion, whether relating to the use of Units, the use of General or Limited Common Elements, or otherwise.

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

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of sections (a) through (h) of this Paragraph 28 shall be made by the Board of Directors and shall be final.

29. ASSOCIATION AS ATTORNEY-IN-FACT; DAMAGE AND DESTRUCTION. This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project upon its destruction, repair or obsolescence. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute irrevocable appointment of The Aspen Leaf Village Condominium Association, Inc. as attorney-in-fact of said grantee as herein provided.

(a) All of the Owners irrevocably constitute and appoint the Association as their attorney-in-fact, for them and in their names, respectively, to deal with the Project upon its destruction, repair or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, acting pursuant to authorization from the Board of Directors, shall have full and complete authority, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the Improvements, as used in the succeeding subparagraphs, means restoring the improvements to substantially the same condition in which they existed prior to the destruction or damage, with each Unit and the General Common Elements and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. Subject to the rights of all first Mortgagees, and with notice to them of substantial damage to or destruction of any Unit or any part of the General Common Elements, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the Owners agree not to rebuild in accordance with the provisions set forth hereinafter.

(b) Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

(c) In the event of damage to or destruction of the Project equal to sixty-seven percent (67%) or less of the total replacement cost thereof (not including land) resulting from 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.

(d) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such destruction or damage is sixty-seven percent (67%) or less of the total replacement cost of the Project (not including land) such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Units. Such deficiency assessment shall be a Common Expense, shall be made pro rata according to each Owner's percentage interest in the General Common Elements, and shall be due and payable within sixty (60) 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 and such assessments for such purpose, notwithstanding the failure of any Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his or her Unit and may be enforced and collected as is provided hereinbefore. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or

failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order: (i) for payment of the balance of the lien of any first Mortgage; (ii) for payment of taxes and special assessment liens in favor of any assessing entity; (iii) for payment of unpaid Common Expenses; (iv) for payment of junior Mortgages and encumbrances in the order of and to the extent of their priority; and (v) the balance remaining, if any, shall be paid to the Owner of the Unit sold.

(e) In the event of damage to or destruction of the Project equal to more than sixty-seven percent (67%) of the total replacement cost thereof (not including land) resulting from fire or other disaster, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Units do not voluntarily, within ninety (90) days thereafter, make provisions for reconstruction, which plan must receive the written approval of two-thirds (2/3) of the first Mortgagees of record at the time of adoption of the plan (based on one vote for each first Mortgage of record), the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles and By-Laws. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be based upon each Owner's percentage interest in the General Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (d) (i) through (d) (v) of this paragraph. The provisions contained in this subparagraph (e) shall not take precedence over the protection given to a first Mortgagee under a mortgagee's insurance endorsement.

(f) In the event of damage to or destruction of the Project equal to more than sixty-seven percent (67%) of the total replacement cost thereof (not including land) resulting from fire or other disaster, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Units adopt a plan for reconstruction, which plan must receive the approval of two-thirds (2/3) of the first Mortgagees described in subparagraph (e) of this paragraph, then all of the Owners shall be bound by the terms and other provisions of such plan. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance paid on account of such destruction or damage, as well as the proceeds of an assessment to be made against all of the Owners and their Units. Any assessment made in connection with such plan shall be a Common Expense, shall be 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 sixty (60) 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 and such assessments for such purpose, notwithstanding the failure of any Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided hereinabove. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (d) (i) through (d) (v) of this paragraph.

(g) The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more of the Units may agree that the Units are obsolete and adopt a plan for the renewal and reconstruction of all the Units, which plan must receive the approval of two-thirds (2/3) of the first Mortgagees as described in subparagraph (e) of this paragraph, If a plan for the renewal or reconstruction

is adopted, notice of such plan shall be recorded, and the expenses of completion of said plan shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the adoption of such plan that his or her Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have fifteen (15) days within which to cancel such plan. If such plan is not cancelled, then the Unit of any Owner not approving the plan shall be purchased by the Association according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter at such value. If the parties are unable to agree, the date when either party notified the other of such disagreement shall be the "commencement date" from which all periods of time mentioned in this subparagraph shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If either party fails to make such a nomination, the appraiser nominated shall within five (5) days after default by the other party appoint and associate with another independent appraiser. If the two appraisers designated by the parties, or selected pursuant hereto, are unable to agree, they shall appoint another independent appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two independent appraisers and from the names of the four persons so nominated, one shall be drawn by lot by any Mortgagee of record for that Unit and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds for the same purposes and in the -same order as is provided in subparagraphs (d) (i) through (d) (v) of this paragraph.

(h) The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more of the Units may agree that the Units are obsolete and that the same should be sold. Such agreement must receive the written approval of two-thirds (2/3) of the first Mortgagees as described in subparagraph (e) of this paragraph. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles and the By-Laws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each such accounts, without contribution from one account to another, for the same purposes and In the same order as is provided In subparagraphs (d) (i) through (d) (v) of this paragraph.

### 30. CONDEMNATION.

(a) Consequences of Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority (which shall include a sale or other disposition under threat of condemnation and in lieu of or in advance thereof) the provisions of this Paragraph 30 shall apply.

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

(c) Complete Taking. In the event that the entire Project is taken or condemned, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interests in the General Common Elements, provided that if a standard other than the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in

determining such share, the same standard shall be employed to the extent it is relevant and applicable. As soon as practicable, the Association shall determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner as is provided in Paragraph 29(d) of this Declaration.

(d) Partial Taking. In the event that less than the entire Project is taken or condemned, condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (i) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury to the General Common Elements, which amounts shall be apportioned among Owners in proportion to their respective undivided interests in the General Common Elements; (ii) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Unit involved; and (iv) the amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

(e) Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof shall cease to be a member of the Association, and such Owner's interest in the General Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided in Paragraph 31(b) hereof.

### 31. MISCELLANEOUS.

(a) Duration of Declaration. All of the provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of the Project and this Declaration are terminated, revoked, or amended as hereinafter provided.

(b) Amendment and Termination. Any provision contained in this Declaration may be amended or additional provisions may be added to this Declaration, or this Declaration and condominium ownership of the Project may be terminated or revoked, by the recording of a written instrument or instruments specifying the amendment or addition or the fact of termination and revocation, executed by the Owners, as shown by the records in the office of the Recorder of the County of Huerfano, Colorado, representing an aggregate ownership interest of seventy-five percent (75%) or more of the Project and not less than two-thirds (2/3) of the first Mortgagees, as described in Paragraph 29(e) hereof; provided, however, that in no event shall the undivided interest of an Owner be decreased without the unanimous consent of all Owners and all first Mortgagees. The consent of any junior Mortgagee shall not be required under the provisions of this paragraph.

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

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

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

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

(d) Protection of Encumbrancer. Subject to the provisions of Paragraph 27 hereof, no violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any first Mortgage, or other lien on any Unit, taken in good faith and for value and perfected by recording in the office of the Recorder of the County of Huerfano, Colorado, prior to the time of recording in said office of a notice describing the Unit and listing the name or names of the Owner or Owners of fee simple title to the Unit and giving notice of such violation or breach of, or failure to comply; nor shall such violation, breach, failure to comply, or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such first Mortgage, or other lien or the title or interest acquired by any purchaser upon foreclosure of any such first Mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration; provided, however, that violations or breaches of, or failures to comply with, any provision of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed violation, breaches, or failures to comply herewith to such purchaser, his heirs, personal representatives, successors or assigns.

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

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

(g) Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally at the Owner's Unit or sent by either registered or 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 Board of Directors of the Association, or upon the Association, shall be sent by certified mail, postage prepaid, to The Aspen Leaf Village Condominium Association, Inc. at the address of its registered agent for service.

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

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

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

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

(l) Sales and Construction Facilities and Activities of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors, shall be permitted to maintain during the

period of any renovation, construction and sale of the Units in the Project, upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Units, including without limitation, a business office, storage area, construction yards, signs, model units, sales offices, construction office, parking areas and lighting and temporary parking facilities for all prospective purchasers of Units. In addition, Declarant, its agents, employees and contractors, shall have the right of ingress and egress over the General Common Elements and Limited Common Elements as in Declarant's discretion may be necessary to complete the Project.

32. NEW ADDITIONS OF GENERAL COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.

The Declarant does not intend to make any major additions of General or Limited Common Elements, and does not intend any expansion of the Project. If the Association should make any such additions, however, (a) each owner will be responsible for his or her percentage of any increase in Common Expenses created thereby; (b) each Owner will then own, as a tenant in common with the other Owners, an undivided interest in the new additions in accordance with the interests set forth on Exhibit 1 attached hereto; (c) each Owner's interest in the existing General and Limited Common Elements will be unaffected by such additions; and (d) each Owner's voting power in the Association will be unaffected by such additions.

IN WITNESS. WHEREOF, Declarant has executed this Declaration on this 10th day of March, 1983.

PANADERO SKI CORPORATION

By *D. Harrison*  
President

ATTEST:

*James H. Moore*  
Secretary

STATE OF COLORADO        )  
                                  ) ss:  
COUNTY OF                )

The foregoing instrument was acknowledged before me this 10th day of March, 1983 by Dwight A. Harrison as President of Panadero Ski Corporation, a Colorado corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT 1

Shown below is the percentage of the undivided interest in the General Common Elements appurtenant to each of the Units:

<u>Unit Number</u>	<u>Undivided Interest Per Unit</u>
Each Unit	1-2/3%