

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
ESTABLISHING A PLAN FOR
CONDOMINIUM OWNERSHIP OF
DER STEIERMARK CONDOMINIUMS

BRECKENRIDGE, COLORADO

KNOW ALL MEN BY THESE PRESENTS:

David W. Hammer and Henry F. Nordsiek, Jr., (hereinafter called
"Declarants") do hereby make the following grants, submissions and declarations:

1. Purpose and name.

1.1 Purpose. The purpose of this Declaration is to submit the land, the improvements thereon and the property interests as herein described to condominium form of ownership and use in the manner provided in the Condominium Ownership Act of the State of Colorado.

1.2 Name and Address. The name by which this condominium is to be identified is Der Steiermark Condominiums. The address shall be Breckenridge, Colorado or such other address as may be designated by recorded document.

2. Definitions.

Unless the context shall expressly provide otherwise, certain terms shall have the following meanings in this Declaration:

2.1 Apartment, office or commercial unit means an individual air space unit which is contained within the perimeter walls, floors, ceilings, windows and doors of such unit in a building as shown and designated as an apartment, office or commercial unit on the Condominium Map, together with all interior non-supporting walls, fixtures and improvements therein contained, but not including any of the foundations, columns, girders, beams, or other structural components of the building as shown on the Condominium Map, within an individual air space unit or the perimeter walls, floors, ceilings, windows or doors enclosing an air space unit.

2.2 Condominium unit or unit means an apartment, office or commercial unit together with the interest in the common elements appurtenant to such unit.

2.3 Condominium owner or owner means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who own(s) one or more condominium units.

2.4 General common elements means the land and the foundations, columns, girders, beams, supports, or other structural components of the building; exterior walls; fire walls; perimeter walls, floors, ceilings, windows and exterior doors of an individual air space unit; flues; chimneys; roofs, halls; corridors; lobbies; stairs; stairways; fire escapes; gardens; rubbish rooms; basement driveway areas; electrical equipment rooms; mechanical equipment and machine rooms; janitor's closets; general storage rooms; trash chutes; pipes,

wires, ducts, cables, conduits, public utility lines and installations of all central and utility services including but not limited to power, light, gas, hot and cold water, and heating; interior and exterior gutters and vertical roof drains; and any and all other portions of the condominium property, except (a) portions of the condominium property contained entirely within and servicing only one apartment, office or commercial unit, or (b) portions of the condominium property which are designated as limited common elements under this Declaration or on the Condominium Map;

2.5 Limited common elements means those common elements set aside and reserved for use by fewer than all the condominium owners, as described, located or shown on the Condominium Map by legend, symbol or words.

2.6 Common elements means the general common elements and the limited common elements.

2.7 Common expenses means and includes expenses of administration and operation of the condominium property, and the expenses of maintenance, repair or replacement of the general common elements; expenses designated as common expenses by the provisions of this Declaration and/or the By-Laws of the Association, all sums lawfully assessed against the apartment, office or commercial units and the general common elements; and any expenses agreed upon as common expenses by the owners.

2.8 Land means the real property described in Exhibit A.
2.9 Condominium building or building means the improvements located above, on or below the surface of the land.

2.10 Condominium property or property means the land and building and all improvements and all appurtenant rights thereto created by this Declaration.
2.11 Condominium Declaration or Declaration means this Declaration together with any supplement or amendment thereto recorded in the office of the Clerk and Recorder of Summit County, Colorado.

2.12 Condominium Map or Map means and includes the engineering survey or surveys of the land, locating thereon the condominiums building, the floor plans and other drawings or diagrammatic plans, including without limitation, charts or schedules depicting all or part of the improvements on the land; the Map will be filed for record in the office of the Clerk and Recorder of Summit County, Colorado.

2.13 Association means Der Steiermark Condominium Association, a Colorado nonprofit corporation, its successors and assigns, the Articles of Incorporation and By-Laws of which shall govern the administration of the condominium property, and the members of which shall be all of the condominium owners.

2.14 Board of Directors means the governing body of the Association

2.15 Managing Agent means the person or firm to which any of the duties, powers and functions of the Board of Directors may be delegated, or are delegated, pursuant to Article 10.

3. Submission.

3.1 Grant and submission. Declarants hereby submit to this Declaration the land and buildings.

3.2 Division into units. The condominium property is hereby divided into fee simple estates known as condominium units. Each such estate consists of one apartment, office or commercial unit, together with an appurtenant undivided interest as a tenant in common in and to the common elements, which undivided interest is more particularly described, together with the description of each condominium unit, in Exhibit B. Each condominium units shall be identified on the Map by the number shown in Exhibit B.

3.3 Partition. Declarants reserve unto themselves and the successor owners of the commercial and office units the right, to be held by the Declarants or any other person at any time owning a commercial or office unit or units, to combine, divide or partition such commercial or office unit or units to create spaces either larger or smaller than such commercial or office unit or units as shown on the Map for the purposes of either conveyancing or leasing; providing, however, that the exercise of such right shall not increase or decrease the percentage of common expenses to be paid by any condominium owner not involved in such combination, division or partition.

4. Condominium Map.

4.1 Description. The Map shall be filed for record in the office of the County Clerk and Recorder of Summit County, Colorado. The Map may be filed in whole or in parts or sections, from time to time, as the stages of construction of the units and other improvements are substantially completed. Each section of the Map filed subsequent to the first or initially filed Map shall be termed a Supplement to such Map and the numerical sequence of such Supplements shall be shown thereon. The Map or any part or section thereof depicting units shall not be filed for record until the building in which the units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically, by a registered engineer or a registered land surveyor. The Map shall be filed for record prior to the conveyance of a condominium unit to a purchaser. The Map shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the building on the land; the floor and elevation plans; the location of the apartment, office and commercial units within the building, both horizontally and vertically; the thickness of the common walls between or separating the apartment, office or commercial units or any other portion of the building; the location of any structural components or supporting elements of the building; and, the unit designations. The Map shall contain the certificate of a registered professional engineer or licensed architect, or both, certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the building, the apartment, office and commercial units, the unit designations, the dimensions of the units, the elevations of the unfinished floors and ceilings as constructed, the building name or designation, and that such Map was prepared subsequent to substantial completion of the improvements. Each Supplement or any amendment shall set forth a like certificate when appropriate.

4.2 Interpretation. In interpreting the Map, the existing physical boundaries of each separate unit as constructed shall be conclusively presumed to be its boundaries.

4.3 Amendment. Declarants reserve the right to amend the Map, from time to time, to conform it to the actual location of any of the constructed improvements and to establish, vacate and relocate outside the building utility easements, access road easements and parking areas. In addition, Declarants reserve unto themselves and the successor owners of the commercial and office units the right to amend the Map to describe alterations resulting from the combination division or partition of a commercial or office unit or units pursuant to the reservations set forth in Article 3.3 hereof.

5. Easements for encroachments.

If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of the building, or if any such encroachment shall occur hereafter as a result of settling or shifting of the condominium building or for any other reason, a valid easement for the encroachment and for the maintenance of the same so long as the condominium building stands shall exist. In the event the condominium building, or any adjoining common element, shall be partially or totally destroyed as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements, due to this rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the condominium building shall stand. The foregoing encroachments shall not be construed to be encumbrances effecting the marketability of title to any condominium unit.

6. Partition.

6.1 General common elements. The general common elements shall be owned in common by all of the condominium owners and shall remain undivided, and neither an owner, group of owners, nor the Association, shall bring any action for partition or division of the general common elements; provided, however, that nothing contained in this paragraph 6.1 shall be construed to limit or prohibit a proportionate adjustment in the percentage ownership in the common elements in connection with the combination, division or partition of any office, or commercial unit pursuant to the reservations set forth in Article 3.3.

6.2 Apartment units. Neither an apartment owner, group of apartment owners, nor the Association shall have the right to combine, divide or partition any apartment unit and in taking title to any apartment unit the owner thereof shall be deemed to have waived any and all rights to partition.

6.3 Office and commercial units. Nothing contained in this Article 6 shall be construed as a limitation of the right of combination, division or partition of an office or commercial unit by the owner or between the owners thereof or for the purpose of sale, use or improvement of such unit; provided, that any such combination, division or partition shall not increase or decrease the percentage ownership in the common elements of, or the percentage of common expenses to be paid by any condominium owner not involved in such combination, division or partition.

7. Termination of mechanic's lien rights and indemnification.

Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a condominium unit

with the consent or at the request of the owner thereof, his agent, contractor or subcontractor, shall be the basis for filing a lien against the condominium unit of any other owner not expressly consenting to or requesting the same, or against the common elements. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien claimant against the condominium unit of any other owner or against the common elements for construction performed or for labor materials, services or other product incorporated in the owner's condominium unit at such owner's request or with his consent. The provisions of this Article 7 shall not apply to any labor performed or materials furnished at the request of the Managing Agent or Board of Directors of the Association pursuant to Article 9.

8. Use and Occupancy.

8.1 General. Each owner shall be entitled to exclusive ownership and possession of his apartment, office or commercial unit. The owners of apartment units acknowledge that business and commercial activities will be conducted on the condominium property and that some annoyance and inconvenience is to be expected and must be tolerated. However, the owners of the office and commercial units are ~~not~~ to be used for residential purposes and that excessive noise, unsightly displays, unpleasant odors and all other nuisances must be avoided.

8.2 Common elements. Each owner may use the common elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other owners. There shall be no obstruction of the common elements, nor shall anything be kept or stored on any part of the common elements without the prior written consent of the Association, except as specifically provided herein. No restriction, impairment or interference with any right of ingress or egress provided for in this Declaration shall be permitted at any time without the prior written consent of the owner thereof, Nothing shall be altered on, constructed in, or removed from the common elements except upon the prior written consent of the Association.

8.3 Apartment units. Each apartment unit shall be used and occupied solely for the purpose of lodging or as a dwelling by the owner, the owner's family, guests, invitees and tenants.

8.4 Office units. Each office unit shall be used and occupied solely for office and related administrative purposes.

8.5 Commercial units. Each commercial unit, or any portion thereof, may be used and occupied as a shop, store, restaurant, cocktail lounge, office or for any other commercial use and purpose of any kind and nature within the limitations established by this Declaration and applicable governmental rules, regulations and ordinances, and reasonable rules and regulations of the Association.

8.6 Use by Declarant. Declarants and their employees, representatives, agents and contractors may maintain on the condominium property a business and sales office, construction facilities and yards, model units and other facilities required during the construction and sales period of the condominium units.

8.7 Maintenance. The condominium owners shall maintain their respective units in a first-class manner.

8.8 Governmental regulations. No operation or activity shall be permitted within any portion of the building which will violate the provisions of any applicable protective covenant, statute, ordinance, governmental regulations, or reasonable rules and regulations of the Association.

9. Maintenance responsibility and access.

9.1 By the owner. The owner shall have the obligation to maintain and keep in good repair the interior surfaces of walls, ceilings and floors (including carpeting, tile, wallpaper, paint or other covering), internal installation repair and maintenance of the unit such as water, light, gas, power, sewer, telephone, air conditioning, garbage disposals, doors, windows, lamps and accessories, and all appurtenant limited common elements, as well as all fixtures and appliances, whether the same are common elements or not, located within such owner's unit. An owner shall not be responsible for repair occasioned by casualty as defined in Article 15, unless such casualty is due to the act or negligence of the owner, his guests, invitees or tenants. An owner shall reimburse the Association for any expenditure incurred for replacing or repairing of any common element and facility damaged through a fault of an owner, his guests, invitees or tenants, and the Association shall be entitled to assess such owner for such amount which shall be payable, collectible and enforceable in the same manner as assessments pursuant to Article 13. No owner shall alter any common elements without consent of the Association.

9.2 By the Association. The Association shall maintain and keep in good repair, as a common expense, all of the condominium property not required to be maintained and kept in good repair by an owner.

9.3 Reservation of access. The Association, through the Board of Directors, shall have the right of access to each unit and its appurtenant limited common elements, from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of common elements, or at any time to deem necessary by the Association for the making of emergency repairs to prevent damage to the condominium property.

10. Administration and management.

10.1 Board of Directors. The Association, by and through its Board of Directors elected in accordance with the Articles of Incorporation and the By-laws of the Association, shall have the duties of the general management, operation and maintenance of the condominium property and the enforcement of the provisions of this Declaration and of the Articles of Incorporation and the By-laws of the Association and rules and regulations adopted thereunder. The Board may delegate any of its duties, powers and functions to any person or firm which will act as the Managing Agent at an agreed compensation.

10.2 Managing Agent. The Managing Agent, if any, shall perform the management, operation and maintenance functions delegated to it by the Board of Directors.

10.3 Certificate of identity. From time to time, but no less than annually, there shall be mailed by the Association to each owner and posted prominently on the condominium property a certificate of identity containing the names and addresses of the members of the Board of Directors and the Managing Agent.

11. Assessment for common expenses.

11.1 Obligation. All owners shall be obligated to pay the estimated assessments imposed by the Board of Directors to meet the common expenses of maintenance, operation and management of the condominium property. The Board may establish any reasonable system for collection periodically of common expenses, in advance or arrears as deemed desirable. Initially assessments for the estimated common expenses on an annual basis shall be made by the Board and shall be payable in equal monthly installments in advance on the first day of each calendar month. At the end of each calendar year the Board shall determine actual expenses and either assess each owner or credit against the next ensuing calendar month, as the case may be. Assessments made shall be based upon the estimated cash requirements deemed to be such aggregate sum as the Board shall from time to time determine to be paid by all of the owners. Estimated expenses include the costs of maintenance and operation of the general common elements, expenses of management, taxes and special assessments unless separately assessed, insurance premiums for insurance coverage as deemed desirable or necessary by the Board, landscaping and care of grounds, common lighting, repairs and renovations, wages, common water and utility charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Board or the Managing Agent under or by reason of this Declaration, payment of any deficit remaining from a previous assessment period, the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the general common elements. The omission or failure of the Board to fix the assessment for any assessment period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay the same.

11.2 Apportionment. Except as specified in Article 12, the percentage of common expenses to be paid by a condominium owner shall be equal to such owner's appurtenant interest in and to the common elements as set forth in Exhibit B.

12. Apportionment of certain expenses.

12.1 Limited common elements. Each owner shall be responsible for a proportionate share of the expenses for cleaning, maintenance, repair and upkeep of the limited common elements reserved for the use of such owner and any other owners. Such proportionate share shall be determined on the basis of relative appurtenant interests of the affected owners in and to the common elements as specified in Exhibit B.

12.2 Benefit to individual owner. Any common expense which the Board of Directors determines to be of benefit to only one owner shall be borne by such owner.

12.3 Benefit to class of owners. Any common expense which the Board of Directors determines to be of benefit to only one or two classes of owners shall be borne by such class or classes (e.g., apartment unit owners, office unit owners and/or commercial unit owners). Any such expense shall be shared by the owners within such class or classes in accordance with their relative appurtenant interests in and to the common elements as specified in Exhibit B.

13. Collection of common expenses.

13.1 Statement of assessment. Upon payment of a reasonable fee

and upon the written request of any owner or of any mortgagee of a condominium unit, the Board of Directors or the Managing Agent, shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current periodic assessment and the date that such assessment becomes due, any penalties due, and credit for advance payments or for prepaid items, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his 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 and upon written request, any such prospective grantee shall be entitled to a statement from the Board of Directors or the Managing Agent, in the form as set forth above, which shall be conclusive upon the Association. Unless such request for a statement or indebtedness shall be complied with within fifteen (15) days of such request, then such grantee shall not be liable for, nor shall the condominium unit conveyed be subject to a lien for, any unpaid assessments accruing prior to the date of such request.

13.2 Assessment lien. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit shall constitute a lien on such unit superior to all other liens and encumbrances except for (i) tax and special assessment liens on the unit in favor of a taxing authority, and (ii) all sums unpaid on a first mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance. If any assessment shall remain unpaid after ten (10) days after the due date thereof, the Board of Directors may impose a penalty on such defaulting owner in an amount equal to 1% of such assessment. Likewise a penalty equal to 1% of the unpaid assessment may be imposed on the first day of each calendar month thereafter so long as such assessment shall be unpaid. To evidence the lien as herein permitted, the Board of Directors may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of accrued penalty thereon, the name of the owner of the condominium unit and a description of the condominium unit, and record the same in the office of the Clerk and Recorder of Summit County, Colorado. Such lien for assessment shall attach from the due date of the assessment. The lien may be enforced by foreclosure of the defaulting owner's condominium unit by the Association in a manner similar to a mortgage on real property upon the recording of a notice or claim thereof. In the event of any such foreclosure, the owner shall be liable for the amount of unpaid assessments, any penalties thereon, the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney fees. The Association shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Any mortgagee holding a lien on a condominium unit may pay any unpaid assessment payable with respect to such unit, and upon such payment the mortgagee shall have a lien on such unit for the amounts paid of the same priority as the lien of the mortgage or deed of trust.

13.3 Personal obligation. The amount of any assessment chargeable against any condominium unit shall be the personal and individual debt of the owner thereof. No owner may exempt himself from liability for the assessment by abandonment or waiver of the use or enjoyment of any of the common elements. Suit

to recover a money judgment for unpaid common expenses plus interest and expenses, including attorney fees, shall be maintainable without foreclosing or waiving the assessment lien provided herein.

14. Insurance.

14.1 Coverage. The Board of Directors shall obtain and pay the premium for, as a common expense, insurance on the condominium building in an amount equal to the maximum insurable replacement value thereof, affording protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as may from time to time be customarily insured against with respect to buildings similar in construction, location and use as the condominium building, including by way of example, vandalism and malicious mischief insurance. The Board shall determine at least annually the replacement value of the condominium building and in so doing may employ such experts as the Board may feel necessary. The Board may also obtain and pay the premiums for, as a common expense, such additional insurance as they may deem necessary or desirable for public liability, workmen's compensation or other types of insurance.

14.2 Policies and certificates. The originals of all insurance policies shall be maintained and kept by the Board of Directors or if under an insurance trustee agreement, by the insurance trustee with certified copies thereof to be kept by the Board. A certificate of coverage of insurance shall be furnished by the Board upon request to any owner or mortgagee of a condominium unit. The insurance shall be carried in blanket policy form naming the Association as insured, and indemnifying the interests of each condominium unit owner and providing for a standard, noncontributory mortgage clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice to each owner and each first mortgagee.

15. Casualty.

15.1 Repair or reconstruction. Repair or reconstruction as used in this Article 15 means restoration of the condominium property to substantially the same condition as it existed prior to the casualty, with each apartment, office and commercial unit and the common elements having the same horizontal and vertical boundaries as before.

15.2 Insurance proceeds sufficient to repair. In the event that proceeds from insurance coverage are sufficient to cover the cost of repair or reconstruction after a casualty affecting the condominium property or any part thereof, then such repair or reconstruction shall be promptly performed by the Association, as attorney-in-fact for the owners pursuant to Article 18.

15.3 Insurance proceeds insufficient to repair. If insurance proceeds are insufficient to repair or reconstruct the damaged or destroyed condominium property, the following provisions shall govern:

(a) Partial damage. For the purposes of this Article 15, total destruction is defined as such damage or destruction as to render, in the judgment of the Board of Directors, all of the units in the condominium building untenable. Any damage or destruction less than total destruction as so defined

is partial damage to the condominium property, whether insurance proceeds shall be sufficient to cover the same or not, shall be repaired as promptly as possible by the Association as attorney-in-fact, and any cost of such repair or reconstruction in excess of insurance proceeds available shall be assessed against all owners of the condominium building as a common expense.

(b) Total destruction. In the event of total destruction of condominium building, as defined in subparagraph (a) above, and in the further event that insurance proceeds are estimated to be insufficient to repair and reconstruct the same, in the judgment of the Board of Directors, then the Board shall advise all owners of such decision which notice shall advise of a special meeting of owners, pursuant to the Articles of Incorporation and By-Laws of the Association, which meeting shall be held as soon as reasonably possible after the date of the casualty for the purpose of determining whether or not the repair or reconstruction should be done. If 75% of the owners, plus all first mortgages, shall agree to adopt a plan for reconstruction, then all owners shall be bound by the terms and provisions of the plan. Any necessary assessment made in connection with the plan shall be a common expense and charged as an assessment to each owner during the course of reconstruction at the times deemed necessary or desirable by the Board. Any such assessment shall be an obligation of each owner and a lien on such owner's condominium unit and may be enforced and collected as common expenses pursuant to Article 13. If 75% of the owners or more, and all first mortgages, fail to approve a plan for reconstruction within six months from the date of the casualty, the entire remaining condominium property shall be sold by the Association, as attorney-in-fact, free and clear of the provisions contained in this Declaration and other condominium documents. In such case, the insurance proceeds payable as a result of the casualty and the sales proceeds, if any, shall be apportioned between the owners on the basis of each owner's apportionant interest in and to the common elements as specified in Exhibit B, and such apportioned proceeds shall be paid into separate accounts, each account representing one condominium 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. The Association, as attorney-in-fact, shall use and disburse the total amount of each separate account, without contribution from one account to another, as follows:

- (i) for payment of taxes and special assessment liens in favor of any assessing entity and customary expenses of sale;
- (ii) for payment of the balance of the lien of any first mortgage;
- (iii) for payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
- (iv) for payment of junior liens and encumbrances in the order of and to the extent of their priority;
- (v) the balance remaining, if any, shall be paid to the condominium unit owner.

16. Obsolescence.

16.1 Renewal and reconstruction. The owners representing an aggregate ownership interest of 75% or more may agree that the condominium property is obsolete and adopt a plan for the renewal and reconstruction, which plan has the unanimous approval or consent of every first mortgagee of a condominium unit. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction 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 date of adoption of such plan that his condominium unit shall be purchased by the Association for the fair market value thereof. The Association shall then have thirty (30) days within which to cancel such plan. If such plan is not cancelled, the condominium unit of the requesting owner shall be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days after such agreement. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned hereafter 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 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 him another appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (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 and a judgment based upon the decision rendered may be entered in any court having jurisdiction thereof. 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 (i) through (v) of Article 15.3 (b).

16.2 Sale of property. The owners representing an aggregate ownership interest of 75% or more may agree that the condominium property is obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice executed by the Association's president and secretary or assistant secretary setting forth such fact, providing a copy of such executed notice to all first mortgagees of condominium unit without delay, and upon the recording of such notice the condominium property 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 and other condominium documents. The award and sales proceeds, if any, shall be collected, apportioned and disbursed by the Association, as attorney-in-fact, in accordance with the procedure set forth in Article 15.3 (b).

17. Condemnation.

17.1 Total taking. If any of the building shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase in lieu thereof, or if a part of the land shall be so taken so that the portion remaining shall be insufficient for the continued use and occupancy of all the condominium units, the Association, as attorney-in-fact for the owners shall collect the award made and such taking and shall sell the remaining part of the condominium property free and clear of the provisions contained in this Declaration and other condominium documents. The award and sales proceeds, if any, shall be collected, apportioned and disbursed by the Association, as attorney-in-fact, in accordance with the procedure set forth in Article 15.3(b).

18. Association as attorney-in-fact.

18.1 Power of attorney. This Declaration does hereby make the irrevocable appointment of the Association as attorney-in-fact for all owners to deal with the condominium property upon its destruction, obsolescence, repair or reconstruction or condemnation, and title to each condominium unit is declared and expressly made subject to the terms and conditions hereof and acceptance by the grantee of a deed from the Declarant from any owners shall irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the condominium property upon its destruction, obsolescence, repair or reconstruction. In the event the condominium property is sold by the Association, as attorney-in-fact, pursuant to Article 15.3(b), Article 16.2 or Article 17.2, the Association shall record a notice in the office of the Clerk and Recorder of Summit County, Colorado, setting forth the circumstances of such sale, and this Declaration shall wholly terminate and expire upon the recording of such notice.

18.2 Substitution for Association. The owners representing an aggregate ownership interest of 51% or more of the common elements may designate a person or other entity to act as the attorney-in-fact of the owners in lieu of the Association to deal with the condominium property upon its destruction, obsolescence, repair or reconstruction, or condemnation.

19. Description of condominium units.

19.1 Contracts. A contract for the sale of a condominium unit written prior to the filing for record of the Map may legally describe a condominium unit by its unit designation shown in Exhibit B, followed by the words "Der Steiermark Condominiums".

19.2 Complete description. Subsequent to the filing of the Map and the recording of this Declaration, every deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its unit designation, followed by the words "Der Steiermark Condominiums" with further reference to the Map thereof filed for record and the recorded Declaration. Every such description or otherwise affect not only the apartment, office or commercial unit but also the interest in the common elements appurtenant thereto.

20. Revocation or amendment of Declaration.

20.1 Revocation. This Declaration shall not be revoked unless all the owners and all the holders of any recorded first mortgage or first deed of

trust covering or affecting any or all of the condominium units unanimously consent and agree to such revocation by instrument(s) duly recorded.

20.2 Amendment. This Declaration shall not be amended, except as otherwise herein provided, unless the owners representing an aggregate ownership interest of 75% or more of the common elements and all of the holders of any recorded first mortgage or first deed of trust covering or affecting any or all condominium units unanimously consent and agree to such amendment by instrument(s) duly recorded; provided, however, that:

(i) The percentage of the undivided interest in the common elements appurtenant to each unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the condominium owners expressed in an amended Declaration duly recorded; and

(ii) No such amendment shall increase the proportionate expenses chargeable against any condominium owner or unit thereof without the unanimous consent of the condominium owners affected thereby expressed in an amended Declaration duly recorded. Notwithstanding the provisions of this Article 20.2, in the event of the combination, division or partition of a commercial or office unit or units pursuant to the reservations set forth in Article 3.3, the owner or owners of the office or commercial unit or units subject to such combination, division or partition and the holders of any recorded first mortgage or first deed of trust covering or affecting any such office or commercial unit or units may amend this Declaration to reflect the adjustment (which adjustment must be based upon the relative square footage of the resulting spaces) between the resulting spaces and the owner or owners thereof with respect to the percentage of common expenses attributable to such resulting spaces; provided, that any such amendment shall not increase or decrease the percentage ownership in the common elements of, or the percentage of common expenses to be paid by, any condominium owner not involved in such combination, division or partition.

21. Miscellaneous provisions.

21.1 Personal property for common use. The Association, as attorney-in-fact for all of the owners, may acquire and hold for the use and benefit of all of the condominium owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the condominium owners in the same proportion as their respective appurtenant interest in and to the common elements, and such interest therein shall not be transferable except with a transfer of a condominium unit. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest

in 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 personal property associated with the foreclosed condominium unit.

21.2 Mailing Address. Each owner shall register his mailing address with the Association, and all notices, demands and statements shall be sent by regular United States Mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices and demands intended to be served upon the Board of Directors shall be sent by regular United States Mail, postage prepaid, to the following address:

David W. Hammer
Blue River Route
Dillon, Colorado 80435

until such address is changed by notice of address change given to the owners.

21.3 Separate tax assessment. Declarants shall advise the assessor of Summit County, Colorado of the creation of the condominium ownership of the condominium property, as is provided by law, so that each condominium unit shall be deemed a separate parcel of real property and subject to separate assessment and taxation.

21.4 Form of ownership. A condominium unit may be held and owned in any form of real property ownership recognized under the laws of the State of Colorado.

21.5 Inseparability of condominium unit. Each apartment, office, and commercial unit shall be inseparable from the undivided interest in and to the common elements appurtenant thereto and no apartment, office or commercial unit or any portion of a commercial unit may be conveyed, leased, devised, mortgaged or otherwise transferred or encumbered without the inclusion in such conveyance, lease, devise, mortgage or other transfer or encumbrance of such appurtenant undivided interest in and to the common elements.

21.6 Compliance with provisions. Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, By-laws, rules, regulations, resolutions and contracts of the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Directors, or the Managing Agent, in behalf of the owners, or in a proper case, by an aggrieved owner.

21.7 Reference to ownership interests. Wherever in this Declaration or in the Articles of Incorporation or By-laws of the Association reference is made to a specific percentage interest of owners, such reference shall be deemed to mean the total aggregate appurtenant interest in and to the common elements as reflected in Exhibit B attached hereto and shall not be deemed to mean a percentage of owners by number of individual persons, partnerships, corporation or other entities.

21.8 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, word or section, or the application thereof in any circumstance is invalidated, such invalidity shall not affect the

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

21.9 Terminology. 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.

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

21.11 Election of Board. Notwithstanding any provision to the contrary contained in this Declaration or in the Articles of Incorporation or the By-laws of the Association, the Declarants shall retain the right to exercise the duties, powers, and functions of the Board of Directors until December 31, 1976 or until all the condominium units are sold, whichever occurs first.

IN WITNESS WHEREOF, Declarants have executed this Declaration this 26th day of February, 1974.

David W. Hammer
David W. Hammer

Henry F. Nordstiek, Jr.
Henry F. Nordstiek, Jr.

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 26th day of February, 1974 by David W. Hammer and Henry F. Nordstiek, Jr.

Witness my hand and official seal.

My commission expires: July 13, 1977

(SEAL)

Patsy Bernice Struble
Notary Public

EXHIBIT "A"

10

CONDOMINIUM DECLARATION

OF

DER STEIERMARK CONDOMINIUMS

LEGAL DESCRIPTION:

A part of Lot 39, amended plat of Four Seasons of Breckenridge Village Filing No. 2, Town of Breckenridge, County of Summit, State of Colorado, more particularly described as:

Beginning at the Southeast corner of the said Lot 39 which is in fact the TRUE POINT OF BEGINNING; thence along a line of the said Lot 39 N76°01'36"W, 239.08 feet; thence N14°20'33"E, 120.78 feet; thence N 7°01'36"W, 123.94 feet; thence along a line of the said Lot 39 S71°41'26"E, 203.87 feet; thence along a line of the said Lot 39 S 6°34'20"E, 226.33 feet; thence along a line of the said Lot 39 S13°58'24"W, 9.14 feet to the TRUE POINT OF BEGINNING,

COUNTY OF SUMMIT, STATE OF COLORADO

EXHIBIT "B"

BOOK 278 PAGE 764

TO

CONDONINIUM DECLARATION

OF

DER STEIERMARK CONDOMINIUMS

*Copy made
1/13*

APARTMENT UNIT DESIGNATION

APPORTIONMENT INTEREST IN AND
TO THE COMMON ELEMENTS

101	1.76%
102	1.76%
103	1.76%
104	1.76%
105	1.76%
106	1.76%
107	1.32%
108	1.32%
109	1.32%
110	1.32%
111	1.76%
112	1.76%
113	1.76%
114	1.76%
115	1.76%
116	1.32%
117	1.32%
118	1.32%
119	1.32%
120	1.32%
201	1.32%
202	2.18%
203	2.18%
204	2.18%
205	2.18%
206	2.18%
207	1.56%
208	1.56%
210	3.58%
211	2.18%
212	2.18%
213	2.18%
214	2.18%
215	1.56%
216	1.56%
217	1.56%
218	1.56%
219	1.56%
220	1.56%
Office or commercial Unit A	13.51%
Office or commercial Unit B	9.19%
Office or commercial Unit D	8.64%
	<u>100.00%</u>