

CONDOMINIUM DECLARATION

FOR

BREAKAWAY WEST

KNOW ALL MEN BY THESE PRESENTS, THAT

WHEREAS, Diamond Enterprises of Colorado, Inc., hereinafter referred to as "Declarant" is the owner of that real estate situate in the County of Eagle, State of Colorado and more particularly described in Exhibit A attached hereto and made a part hereof by this reference;

WHEREAS, Declarant desires to establish a condominium project under and pursuant to the Condominium Ownership Act of the State of Colorado, as amended; and

WHEREAS, Declarant has executed plans for the construction of two buildings and other improvements appurtenant thereto on the subject property which, when completed, will be divided into twelve separately designated residential condominium units, several indoor parking areas and certain common elements; and

WHEREAS, Declarant hereby establishes a plan for (1) ownership of separate fee simple estates consisting of the area or space contained in each of the residential units in the building, (2) similar fee ownership of the area or space occupied by underground parking areas, (3) co-ownership by the individual and separate fee owners, as tenants in common, of certain of the remaining real and personal property hereinafter defined and referred to as the general common elements, and (4) the ownership by an association of such owners of certain other real and personal property, hereinafter defined and referred to as the project common elements; and

WHEREAS, it is presently the intention of Declarant to expand the said condominium project to additional buildings and improvements to be owned in a similar fashion,

NOW THEREFORE, Declarant hereby publishes and declares that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be a burden on and a benefit to Declarant, its successors and assigns and any persons acquiring or owning an interest in the subject property, their successors, grantees, heirs, executors, administrators, devisees, and assigns.

1. DEFINITIONS. Unless the context shall expressly provide otherwise, the following definitions shall apply:

(a) "Individual Air Space Unit" means any space (whether enclosed or otherwise defined on the map) occupying all or part of a floor or floors in a building subject hereto, and which in no case extends beyond the perimeter walls, ceilings, floors, windows and doors thereof as designated on the map.

(b) "Condominium Unit" or "Unit" means an individual airspace unit together with the interest in the general and limited common elements appurtenant to such unit.

(c) "Parking Unit" means such bottom floor condominium unit as is constructed for vehicle parking purposes.

(d) "Residential Unit" means any condominium unit other than a parking unit.

(e) "Owner" means a person, firm, corporation, partnership, association, or other legal entity, or any combination thereof, owning one or more condominium units.

(f) "Common Elements" means real or personal property owned (1) as tenants in common by owners of units, which ownership is appurtenant to ownership of such units, (General Common Elements and Limited Common Elements) or (2) by a Condominium Association as hereinafter defined (Project Common Elements).

(g) "Project Common Elements" means property of any kind owned by the Association of Unit Owners, as hereinafter defined, and used or reserved for the common use of the members of such Association and their guests; such property may include, by way of illustration and without limitation on the generality of the foregoing, vacant land, parking areas, recreational facilities, yards, gardens, sidewalks or paths, driveways, barbecue and picnic areas, equipment, materials, or other property and easements and rights necessary or convenient thereto.

(h) "General Common Elements" means all of the following not defined above as project common elements:

- (1) The land on which a building is located;
- (2) The foundations, columns, girders, beams, supports, main walls, roofs, stairs, sidewalks, and driveways of the building;
- (3) The installations of central services including water, heating and utilities and in general all apparatus, equipment and materials existing for common use incidental to a building;
- (4) All other parts of the property and easements and rights necessary or convenient to a building's existence, maintenance and safety, or normally in common use.

(i) "Limited Common Elements" means those parts of the general common elements reserved for the exclusive use of the owner of a condominium unit.

(j) "Entire Premises": "Premises", "Project" or "Property" means the land, buildings, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

(k) "Condominium Project" means all of the land and improvements initially and subsequently submitted to this Declaration.

(l) "Common Expenses" means:

- (1) All sums lawfully assessed against the general common elements or the project common elements;

(2) Expenses of administration and management, maintenance, repair or replacement of the general common elements or the project common elements;

(3) Expenses declared common expenses by the unit owners.

(m) "Association of Unit Owners" or "Association" means the Breakaway West Association, a Colorado non-profit corporation, the Articles of Incorporation and By-Laws of which shall govern the administration of this condominium project, and the members of which shall be all of the owners of the condominium units of this condominium project.

(n) "Map" or "Plan" means the engineering survey of the subject property locating thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements.

(o) "Building" means a building improvement occupying and comprising a part of the subject property.

2. CONDOMINIUM MAP. The Map shall be filed for record or recorded prior to the first conveyance of any condominium unit. Such Map shall set forth and depict (1) the surface of the land and its legal description, with designation of and separate legal description of any project common elements and general common elements; (2) the linear measurements and location, with reference to the exterior boundaries of the land, of the building and all other improvements built or to be built on said land by Declarant; (3) floor plans and elevation plans of any building thereon showing location, unit designation and linear dimensions of each unit; similar information with respect to limited common elements; (4) the elevations of the unfinished interior surfaces of the floors and ceilings, and linear measurements showing the thickness of perimeter walls.

The Map shall contain or be accompanied by a certificate of registered architect or licensed professional engineer certifying that such Map fully and accurately depicts the layout, measurements and location of all improvements, any project common elements, general common elements, unit designations, and the dimensions of such unit and the elevations of the floors and ceilings.

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

Declarant reserves the right to amend the Map, from time to time, to conform same to the actual physical location of the constructed improvements and to any changes, modifications or alterations.

3. DIVISION OF PROPERTY INTO CONDOMINIUM UNITS. The real property and improvements to be constructed thereon are hereby divided into the following fee simple estates:

A certain number of fee simple estates, each such estate consisting of one residential unit together with an appurtenant undivided interest in and to the general common elements associated with the building in which such unit is located, such interest being shown on Exhibit B, attached hereto and hereby made a part hereof.

A certain number of additional fee simple estates, each such estate consisting of one parking unit together with an appurtenant undivided interest in and to the general common elements associated with the building in which such unit is located, such interest being shown on Exhibit B.

Each such condominium unit shall be identified on the Map in the same manner as on Exhibit B.

The general common elements shall be held in common by the owners of the undivided condominium units associated with the building in which such units are located. The project common elements shall be conveyed to the Association for the use and benefit of its members from time to time.

4. INSEPARABILITY OF A CONDOMINIUM UNIT. Each unit and the appurtenant undivided interest in general common elements shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a condominium unit.

5. DESCRIPTION OF A CONDOMINIUM UNIT. Every deed, lease, mortgage, trust deed, will, or other instrument may legally describe a condominium unit by its identifying unit number (shown on Exhibit B), followed by the words, "BREAKAWAY WEST", with further reference to the recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the general common elements and the limited common elements reserved for use with such condominium unit, and also to convey the right of ingress and egress to and from said unit and the limited common elements adjacent thereto.

6. SEPARATE ASSESSMENT AND TAXATION - NOTICE TO ASSESSOR. Declarant shall give written notice to the Eagle County Assessor of the creation of condominium ownership of this property, as is provided by law, so that each unit and its appurtenant undivided interest in the general common elements shall be deemed a separate parcel and subject to separate assessment and taxation, as shall be the project common elements.

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

8. NONPARTITIONABILITY OF GENERAL COMMON ELEMENTS. The general common elements shall be owned in common by all of the owners of the units in the building to which such general common elements relate and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall

be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

9. USE OF GENERAL AND LIMITED COMMON ELEMENTS. Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner has the exclusive right to use the limited common elements appurtenant to his unit. Each owner may use the general common elements in accordance with the purposes for which any such elements are intended without hindering or encroaching upon the lawful rights of the other owners. Each owner of a residential unit may use the project common elements in accordance with the purposes for which such elements are intended without hindering or encroaching upon the lawful rights of other such owners.

10. USE AND OCCUPANCY. All residential units shall be used and occupied principally for residential purposes by the owner, by the owner's family or the owner's guests and tenants. All parking units shall be used solely for vehicle parking and storage of personal property.

Declarant and its employees, representatives, agents, and contractors may on the subject property maintain a business and sales office, construction facilities and yards, model units and other facilities required during the construction and sales period.

11. EASEMENTS FOR ENCROACHMENTS. If any portion of the general common elements now or hereafter encroaches upon a condominium unit or units, or upon the project common elements, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a unit now or hereafter encroaches upon the general common elements, the project common elements or upon an adjoining unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of the project common elements now or hereafter encroaches upon a condominium unit or units, or upon the general common elements, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the project common elements, or the condominium units.

12. 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 unit with the consent or at the request of the owner thereof or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit of any other owner not expressly consenting to or requesting the same, or against the general common elements owned by such other owners, or against the project common elements. Each owner shall indemnify and hold harmless each of the other owners and the Association from and against all liability arising from the claim of any lien against the unit

of any other owner or against the general common elements or the project common elements for construction performed or for labor, material, services, or other products incorporated in or otherwise attributable to the owner's condominium unit at such owner's request.

13. ADMINISTRATION AND MANAGEMENT. The administration and management of this condominium property shall be governed by the Articles of Incorporation and By-Laws of Breakaway West Association, a non-profit Colorado corporation, hereinafter referred to as the "Association". A certified copy of the Certificate of Incorporation of such corporation shall be filed or recorded in Eagle County essentially simultaneously or prior to the recording of this Declaration. An owner of a condominium unit, upon becoming an owner, shall be a member of the Association and shall remain a member for the period of his ownership. No person shall be a member unless he is an owner. An exclusive Agent for the operation and management of this condominium project may be appointed by the Association.

14. RESERVATION FOR ACCESS-MAINTENANCE, REPAIR AND EMERGENCIES. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Directors of the Association, to have access to each unit from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the general common elements therein necessary to prevent damage to the general or limited common elements, to another unit or units, or to the project common elements.

Damage to the interior of 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 insistence of the Association shall be a common expense of all of the owners; provided, however, that if such damage is the result of the negligence of a unit owner, then such unit owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be to substantially the same condition as that of such improvements prior to the damage.

15. OWNERS' MAINTENANCE RESPONSIBILITY OF UNIT. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the windows, doors, interior non-supporting walls, the materials (such as but not limited to plaster, gypsum dry walls, paneling, wall-paper, brick, stone, paint, wall and floor tile, and flooring, but not including the subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the unit and the unit doors and windows. The owner shall not be deemed to own any utilities running through his unit which serve more than one unit except as a tenant in common with the other owners. Such right to repair, alter and remodel shall carry the obligation to replace any finishing materials removed with similar or other types or kinds of finishing materials of equal or better quality.

Each owner shall maintain and keep the interior, including the fixtures, of his own unit in good taste and repair. All fixtures and equipment installed within the unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the unit shall be maintained and kept in repair by the owner thereof.

No owner shall do any act or any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament.

**16. COMPLIANCE WITH PROVISIONS OF DECLARATION AND BY-LAWS.** Each owner shall comply strictly with the provisions of this Declaration, the provisions of the Articles of Incorporation and By-Laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure so to comply shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

**17. REVOCATION OR AMENDMENT TO DECLARATION.** This Declaration shall not be revoked nor shall any of the provisions herein be amended unless (1) sixty-six and two-thirds percent or more of the owners of residential units (based on aggregate ownership in the project measured by one vote for each residential unit), (2) sixty-six and two-thirds percent or more of the owners of parking units (based on one vote for each such space), if such amendment or revocation will affect owners of parking units, and (3) all of the holders of any recorded mortgages or deeds of trust covering or affecting any or all units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded; provided, however, that the percentage of the undivided interest in the general common elements appurtenant to each unit, as stated in Exhibit B, shall have a permanent character and shall not be altered without the consent of all of the unit owners as expressed in a duly recorded amendment to this Declaration.

**18. ASSESSMENT FOR COMMON EXPENSES.** The assessments made upon the owners by the Association shall be based upon cash requirements estimated by the Managing Agent or Board of Directors of the Association from time to time as payable by all unit owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements and the project common elements. Said sum may include, among other things, the following: Expenses of management; taxes and special assessments, until separately assessed or with respect to project common elements; fire insurance with extended coverage and vandalism and malicious mischief insurance with endorsements attached issued in the amount of the maximum replacement value of all units and similar insurance with respect to project common elements; casualty and public liability and other insurance premiums; landscaping and care of grounds; snow removal; common lighting and heating; repairs and renovations; garbage collection; wages; water charges; legal and accounting fees; management fees; expenses and

liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration; the payment of any deficit remaining from a previous 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 and the project common elements. The omission or failure of the Board 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.

19. INSURANCE. The Managing Agent or Board of Directors shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and protection for such risks as are deemed advisable by the Board of Directors and are from time to time customarily covered with respect to other apartment or condominium buildings, similar project common elements, fixtures, equipment and personal property similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The basic fire and extended coverage insurance on condominium units and the general common elements insurance shall be carried in blanket policy form naming the Association as the insured, which policy or policies shall identify the interest of each unit owner and which shall provide for a standard, non-contributory mortgagee clause in favor of each first mortgagee, and shall further provide that it cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice to each first mortgagee. The Managing Agent or Board of Directors shall, upon request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor.

All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or non-compliance with any provisions of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Determination of maximum replacement value of all condominium units for insurance purposes shall be made annually by one or more written appraisals, copies of which shall be furnished forthwith to each mortgagee of a condominium unit. In addition, each owner shall be notified of such appraisals.

20. LIABILITY FOR ASSESSMENTS. All owners shall be obligated to pay the estimated assessments imposed by the Board of Directors or Managing Agent of the Association to meet common expenses. Except for insurance premiums for basic fire and extended coverage insurance on condominium units and general common elements, assessments shall be made pro rata against the owners of each unit based on the ratio of floor area of such unit to (1) the floor area of all units in the individual building, in the case of expenses for general common elements and (2) to the floor area of all units within



the project existing at the time such assessment shall be due, in the case of expenses for project common elements, except that for the purpose hereof, parking units shall be deemed to consist of one quarter the actual measured number of square feet therein. Assessments for insurance premiums for the basic fire and extended coverage insurance on condominium units and general common elements shall be based upon that proportion of the total premiums that the insurance carried on a unit bears to total coverage. Assessments for the estimated common expenses, including insurance, shall be due monthly in advance on the first day of each month, and shall draw interest at eight percent (8%) per annum if not paid within fourteen (14) days of such due date. The Managing Agent or Board of Directors shall prepare and deliver or mail to each owner an itemized quarterly statement showing such owner's share of actual expenses for common expenses, including taxes and assessments with respect to project common elements, and also itemizing accumulations for estimated future expenses. Contributions for monthly assessments shall be prorated if the ownership of a unit commences on a day other than the first day of a month.

Nothing herein provided shall prevent the Managing Agent or Board of Directors from treating assessments for residential units and parking units separately. If they deem it advisable so to do, they may apportion expenses attributable to parking units equally among the owners of such units, deducting such expenses attributable to parking units from the expenses to be apportioned among owners of residential units as above provided.

Any first mortgage, upon request, shall be given written notice by the Association or Managing Agent at any time its mortgagor fails to pay any such assessment within fourteen (14) days of the due date.

No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the general common elements or project common elements, or by abandonment of his unit.

**21. LIEN FOR NONPAYMENT OF COMMON EXPENSES.** All sums assessed but unpaid for the share of common expenses chargeable to any unit, including interest, shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

(a) Tax and special assessment liens in favor of any assessing unit; and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such a lien.

To evidence such a lien the Board of Directors or Managing Agent may, but shall not be required, to prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the unit and a description of the unit. Such a notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment, and may be enforced by foreclosure on the defaulting owner's unit by the Association in like manner as foreclosure on a mortgage or deed of trust on real property. In any such foreclosure, the owner shall be required to pay the costs and expenses of

such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay the Association a reasonable rental for the unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid in the unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the common expenses assessed against each unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

**22. LIABILITY FOR COMMON EXPENSE UPON TRANSFER OF CONDOMINIUM UNIT.** Upon payment of a reasonable fee not to exceed fifteen dollars and upon the written request of any owner or any mortgagee or prospective mortgagee of a unit, the Association, by its Managing Agent or Board of Directors, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date such assessment becomes due, any credit for advance payments or for prepaid items, including but not limited to insurance premiums and such statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. If such statement of indebtedness is not issued within ten days of the request, all unpaid common expenses with respect to the subject unit due prior to the date of such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided however, that upon payment of a reasonable fee not to exceed fifteen dollars, and upon written request, any prospective grantee shall be entitled to a statement from the Managing Agent or Board of Directors, setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, any credit for advanced payments or for prepaid items, including but not limited to insurance premiums, and such statement shall be conclusive upon the Association. If such statement of indebtedness is not issued within ten days of such request, then such grantee shall not be liable for, nor shall the unit conveyed be subject to liens for any assessments against the subject unit unpaid at the date of the request. The provision of this paragraph shall not apply upon the initial transfer of units by Declarant.

23. MORTGAGING A CONDOMINIUM UNIT - PRIORITY. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a unit may create junior mortgages on the following conditions: (1) Any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for common expenses, and other obligations created by this Declaration, the Articles of Incorporation and the By-Laws of the Association; (2) The mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were affected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association.

24. RIGHT OF FIRST REFUSAL BY OWNERS. In the event any owner of a unit, except the Declarant, shall wish to sell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining owners shall be given written notice thereof together with an executed copy of such offer and the terms thereof. Such notice and copy shall be deemed given to all such owners if delivered to the Board of Directors. All, or less than all, of the remaining owners through the Board of Directors, or a person named by it, shall have the right to purchase or lease the subject unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the twenty-day period immediately following the delivery of the notice of the bona fide offer and copy thereof. The right of first refusal herein provided shall not apply to leases or sub-leases having a term of less than one hundred and twenty-one days.

In the event any owner shall attempt to sell or lease his unit without complete compliance with the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of any interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. Compliance with these right of first refusal provisions shall be mandatory in every case, notwithstanding an owner's prior lease or rental of said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his interest in the project to a trust deed, mortgage or other security instrument.

The failure of or refusal by the Board of Directors to exercise the right of first refusal shall not constitute or be deemed to be a waiver of such right with respect to any subsequent bona fide offer from a prospective purchaser or tenant.

The right of first refusal, as provided herein, shall extend and run for the life of Ralph T. Sloan, plus twenty-one years.

Except as is otherwise provided in paragraph 25, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each grantor of a unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

25. EXEMPTION FROM RIGHT OF FIRST REFUSAL. In the event of any sale under foreclosure (including delivery of a deed to the first mortgagee in lieu of such foreclosure) upon default on the part of any owner, sale shall be made free and clear of the provisions of paragraph 24, but the purchaser or the grantee under such deed in lieu of foreclosure, shall be thereupon and thereafter subject to the provisions of this Declaration, the Articles and the By-Laws of the Association, except that if the purchaser on such foreclosure sale, or grantee under such deed given in lieu of foreclosure, is the holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the unit free and clear of the provisions of paragraph 24, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The following transfers are also exempt from the provisions of paragraph 24:

(a) The transfer by operation of law of a joint tenant's interest to the surviving joint tenant(s);

(b) The transfer of a deceased's interest to a devisee or devisees by will or his heirs at law under intestacy laws;

(c) The transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or a person or persons becoming partners; a transfer of all or part of a partner's or partners' interests between one or more partners and/or to persons becoming partners;

(d) The transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution. A transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least fifty percent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the unit.

If the owner of a unit can establish to the satisfaction of the Managing Agent or Board of Directors that a proposed transfer is not a sale or lease, or a subleasing or subrenting, then such a transfer shall not be subject to the provisions of paragraph 24.

**26. CERTIFICATE OF COMPLIANCE - RIGHT OF FIRST REFUSAL.** Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any unit, the Managing Agent or Board of Directors of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing:

(a) With respect to a proposed lease or sale under paragraph 24, that proper notice was given by the remaining owners but did not elect to exercise their option to purchase or lease;

(b) With respect to a deed in lieu of foreclosure to a first mortgagee or its nominee and a deed from such first mortgagee or its nominee, pursuant to paragraph 25, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 24;

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer will not be subject to the provisions of paragraph 24.

Such a certificate shall be conclusive evidence of the facts contained therein.

**27. ASSOCIATION AS ATTORNEY-IN-FACT.** This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

Title to any unit hereunder shall be expressly subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall effect appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint Breakaway West Association, a Colorado non-profit corporation, their true and lawful attorney in their name, place and stead, for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its duly authorized officers from time to time, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument necessary or appropriate to exercise the powers herein granted with respect to the interest of any unit owner. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring any such improvements to a condition substantially the same as prior to the damage, with each unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the owners of the building affected and all affected first mortgagees agree not to rebuild in accordance with the provisions set forth hereafter.

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

(b) If the insurance proceeds are insufficient to repair or reconstruct the improvements, and if such damage rendered not more than one half of the previously existing residential units destroyed or seriously damaged, upon the unanimous approval or consent or every first mortgagee affected, 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 affected owners and their units. Such deficiency assessment shall be a common expense and made pro rata according to floor area ratios in the manner provided herein above in paragraph 20 (wherein parking units are deemed to contain one quarter the actually measured square feet therein), and shall be due and payable within thirty days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his unit and may be enforced and collected as is provided in paragraph 21. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, in following order:

(1) For payment of the balance of the lien of any first mortgage;

(2) For payment of tax and special assessment liens in favor of any assessing entity;

(3) For payment of unpaid common expenses;

(4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

(5) The balance remaining, if any, shall be paid to the prior unit owner.

(c) If more than one half of the previously existing residential units in a building are destroyed or seriously damaged, and if the owners of one half of the residential units, or more, do not voluntarily, within one hundred days thereafter, adopt a plan for reconstruction, which plan must have the unanimous approval or consent of every affected first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president, the entire remaining premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interest appears on the policy or policies), and such divided proceeds shall be paid into a separate account representing each unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the unit and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such funds, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the unit represented by such separate account. There shall be added to each account the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon floor area ratios as provided in paragraph 20. 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 provided in subparagraph (b) (1) through (5) of this paragraph.

If the owners of one half of the affected residential units, or more, adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to floor area ratios as provided in paragraph 20 and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvement using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be

a debt of each owner and a lien on his unit and may be enforced and collected as is provided in paragraph 21. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such assessment within the time provided; and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purpose and in the same order as provided in subparagraphs (b) (1) through (5) of this paragraph.

(d) Owners of three quarters or more of the residential units affected, upon the unanimous approval or consent of all affected first mortgagees, may agree that the general common elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the owners of such general common elements as common expenses; provided, however, that any owner not agreeing to such renewal or reconstruction may give written notice to the Association that his unit shall be purchased by the Association for the fair market value thereof. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten days following the commencing date, each party shall nominate an appraiser in writing, and shall give notice of such nomination to the other party; any such appraiser shall be a realtor and qualified to make appraisals of condominium and similar property in Eagle County, Colorado. If either party fails to make such nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another similarly qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another similarly qualified appraiser to be arbitrator between them, if they can agree on such person. If they are unable to agree upon such arbitrator, then the matter shall be settled pursuant to the rules of the American Arbitration Association. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the arbitrator shall be final and binding. The expenses and fees of such appraisers or arbitrator or both shall be borne equally by the Association and the owner. The sale shall be consummated



within fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraphs (b) (1) through (5) of this paragraph.

(e) Owners of three quarters of the affected residential units may agree that the general common elements of the property are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every affected first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such facts, and upon the recording of such notice by the Association, the entire affected premises shall be sold by the Association, as attorney-in-fact for all of the affected owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between such 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 representing each unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the unit and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraphs (b) (1) through (5) of this paragraph.

**28. PERSONAL PROPERTY FOR COMMON USE AND PROJECT COMMON ELEMENTS.** At such time as its development program no longer requires the use thereof, Declarant shall transfer to the Association all items of personal property located on the premises and furnished by Declarant, which property is intended for the common use and enjoyment of the unit owners and occupants. The Association shall hold title to such property for the use and enjoyment of the unit owners and occupants. No owner shall have any other interest or right thereto and all such right and interest shall absolutely terminate upon the owner's termination of ownership of his unit.

Essentially simultaneously with the first conveyance of any unit, Declarant shall execute and deliver proper instruments to convey the project common elements to the Association. The Association shall hold title to such property for the use and enjoyment of the unit owners and occupants. No owner shall have any other interest or right thereto and all such right and interest shall absolutely terminate upon the owner's termination of ownership of his unit. The project common elements shall be managed by the Association or its designated Managing Agent and all management decisions with respect thereto shall be made by the Association or its designated Managing Agent. Costs and expenses, taxes and assessments, insurance proceeds, sale proceeds and other proceeds with respect to the project common elements shall be apportioned between the owners on the basis of floor areas, as herein above provided.

29. MAILING OF NOTICES. All notices, demands or other notices intended to be served upon an owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such owner in care of the unit number and building address of such owner. All notices, demands or other notices intended to be served upon the Managing Agent or the Board of Directors of the Association shall be sent by ordinary or certified mail, postage prepaid, to Ralph T. Sloan, P. O. Box 242, Vail, Colorado 81657.

Any first mortgagee, upon request, shall be entitled to notice from the Association or Managing Agent under the same circumstances as its mortgagor.

30. ARBITRATION REQUIRED FOR ANY CLAIM HEREUNDER. Except as otherwise herein provided, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.

31. PERIOD OF CONDOMINIUM OWNERSHIP. The separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked pursuant to paragraph 17 of this Declaration or until terminated pursuant to subparagraphs (c) and (e) of paragraph 27 of this Declaration.

32. RESERVATION TO ENLARGE CONDOMINIUM PROJECT.

(a) Declarant expressly reserves the right to enlarge this condominium project by constructing additional condominium buildings and other improvements on separate real property, which units may from time to time be submitted to this condominium project by a duly recorded supplement to this Declaration and by a supplement to the Map filed for record.

(b) In form and substance, any such supplement to this Declaration shall provide for the division of such additional real property and improvements into condominium units in form substantially similar to that of this Declaration. Each unit shall be identified by number, and each building shall be identified by a symbol or designation dissimilar to any other building under this Declaration and the Map. The undivided interests in and to the general common elements appurtenant to each such unit shall not be a part of the general common elements of the condominium units described in and initially created by this Declaration and the Map, provided, however that project common elements may be created for the use and benefit of all owners in the project. The undivided interests in the general common elements shall have a permanent character and shall not be altered without the consent of all of the unit owners affected, which agreement shall be expressed in a duly recorded Amendment to this Declaration.

(c) Except as is provided in paragraphs 3 and 4 of this Declaration, all of the provisions contained in this Declaration shall be applicable to such additional condominium units. Common expenses of such additional units shall be separately assessed, and all insurance policies shall cover only such additional condominium units, except as may be

convenient with respect to project common elements.

(d) Referring to paragraph 27 of this Declaration relating to destruction and obsolescence, only the owners and first mortgagees of the units affected (damaged, destroyed or obsolete) shall be entitled to vote upon the happening or occurrence of any of the events contemplated under and by the provisions set forth in said paragraph 27 and the subparagraphs thereof. The initially constructed condominium improvements and any additional condominium improvements shall be a part of the whole project, but each such separately constructed and submitted condominium improvement, together with its general common elements, shall be considered a separate condominium for the purpose of said paragraph 27, and the aggregate interests of each of such separately constructed condominium improvements shall be considered one hundred percent for such voting purposes.

(e) Except as is provided in subparagraph (d) of this paragraph each unit owner shall be entitled to vote his percentage or fractional interest in and to the general common elements and project common elements, and the aggregate of all of the undivided interests submitted to and making up the total condominium project shall be considered one hundred percent for such voting purposes.

33. OWNERSHIP OF PARKING UNITS. As parking units are provided for the benefit of owners in this condominium project and not for the public at large, ownership of such units shall be restricted to owners of residential units in this condominium project as constituted hereby or as it may hereafter be amended.

34. GENERAL.

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

(b) 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.

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

Dated this 24th day of November, 1972.

DIAMOND ENTERPRISES OF COLORADO, INC.

By Ralph T. Sloan  
Ralph T. Sloan, President

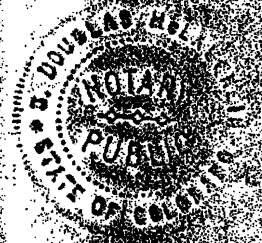


STATE OF COLORADO )  
                          ) ss.  
COUNTY OF EAGLE    )

The foregoing instrument was acknowledged before me this 20th day of November, 1972, by Ralph T. Sloan as President of Diamond Enterprises of Colorado, Inc.

Witness my hand and official seal.

My commission expires: November 30, 1975



*Douglas H. Rubin*  
Notary Public

EXHIBIT A  
to  
CONDOMINIUM DECLARATION  
for  
BREAKAWAY WEST

That part of Lot 3, Block B, Lion's Ridge Subdivision,  
County of Eagle, State of Colorado, described as follows:

Beginning at the Northwesterly corner of said Lot 3,  
thence S 20° 45' 13" E along the northerly lot line of said  
Lot 3 a distance of 75.17 feet; thence S 13° 06' 48" W  
a distance of 214.35 feet to a point on the northerly  
right-of-way line of Lion's Ridge Loop, a dedicated county  
road, being also a point on a curve; thence an arc distance  
of 75.76 feet along a curve to the left having a radius of  
307.56 feet, and a central angle of 18° 06' 51" and a cord  
that bears N 69° 49' 46" W 75.51 feet distant, to the South-  
west corner of said Lot 3; thence N 13° 06' 48" E a distance  
of 200.00 feet to the point of beginning; containing 15,421  
square feet or 0.354 acres more or less.

EXHIBIT B  
TO  
CONDOMINIUM DECLARATION  
FOR  
BREAKAWAY WEST

Building One

<u>Residential Unit No.</u>	<u>Appurtenant Undivided Interest</u>	
111	13.5%	
112	13.5%	
121	13.5%	
122	13.5%	
131	19.0%	
132	<u>19.0%</u>	
	92.0%	92.0%
<u>Parking Unit No.</u>		
P-11	2.0%	
P-12	2.0%	
P-13	2.0%	
P-14	<u>2.0%</u>	
	8.0%	<u>8.0%</u>
	Building One	100.0%

Building Two

<u>Residential Unit No.</u>	<u>Appurtenant Undivided Interest</u>	
211	13.5%	
212	13.5%	
221	13.5%	
222	13.5%	
231	19.0%	
232	<u>19.0%</u>	
	92.0%	92.0%
<u>Parking Unit No.</u>		
P-21	2.0%	
P-22	2.0%	
P-23	2.0%	
P-24	<u>2.0%</u>	
	8.0%	<u>8.0%</u>
	Building Two	100.0%

122245

STATE OF COLORADO, }  
EAGLE COUNTY. } ss.

I hereby certify that this instrument  
was filed for record in my office the

28th day of Jan., 1972 at  
2:00 o'clock P.M., and is duly recorded

in Book 226 Page 448

Marcell P. Berg  
County Clerk and Recorder

By Steve Nell  
Deputy

Fee \$ 40.50