

TIMBERLINE CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, TENDERFOOT DEVELOPMENT CORPORATION, a Colorado corporation, hereinafter called "Declarant", is the owner of the following described real property (hereinafter called the "Subject Land"):

Lot Nine, Block D, New Town of Dillon, County of Summit, State of Colorado, according to the plat thereof on file in the office of the Clerk and Recorder of Summit County, Colorado;

and

WHEREAS, Declarant has constructed a three-story building containing eighteen (18) separately designated apartment units and related common elements with respect to which Declarant desires to create condominium ownership of separate real property estates in the Subject Land and improvements thereon pursuant to the Condominium Ownership Act of the State of Colorado; and

WHEREAS, such condominium ownership shall include the ownership in fee simple of separate real property estates consisting of the area or space contained in an apartment unit, together with the fixtures and improvements related thereto as hereinafter defined, and the co-ownership by the individual and separate owners of all the apartment units in the building, as tenants in common, of the common elements as hereinafter defined.

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

ARTICLE 1

Definitions

Unless the context shall expressly provide otherwise, the following terms when used in this Declaration shall have the meanings set forth in this Article 1:

1.1. "Apartment" or "apartment unit" means an individual air space unit which is contained within the unfinished perimeter walls, floors, ceilings, windows and doors of the air space unit in the building as shown and designated as an apartment or apartment unit on the Condominium Map, together with all interior non-supporting walls, fixtures and improvements therein contained, and those installations within an air space unit for electricity, gas, water and heating including, but not limited to, pipes, wires, ducts, cables, conduits, public utility lines, equipment, tanks, pumps, motors, fans and compressors which serve only the individual apartment unit and do not serve any other apartment unit, commencing at that point at which such installations enter the apartment unit; provided that apartment or apartment unit shall not include any of the foundations, roof, columns, girders, beams, or other structural components of the building as shown on the Condominium Map within an individual air space unit, the perimeter walls, floors, ceilings, windows or doors enclosing an air space unit or any other common element as hereinafter defined.

1.2. "Condominium unit" means an apartment unit together with the interest in the common elements appurtenant to such unit.

1.3. "Owner" or "condominium owner" means a person, firms, corporation, partnership, association or other legal entity, or any combination thereof, who own(s) one or more condominium units.

1.4. "Common elements" mean general common elements and limited common elements.

1.5. "General common elements" mean:

1.5.1. the Subject Land;

1.5.2. the foundations, roof, columns, girders, beams, or other structural components of the building; exterior walls; perimeter walls, floors, ceilings, windows and exterior doors of an individual air space unit; flues; roofs; stairs; stairways; stair wells; fire escapes; the balconies on the North side of the building shown as a common element on the Condominium Map; entrances; exits; exterior walkways; yards; gardens; electrical facilities, pipes, wires, ducts, cables, conduits and public utility lines, motors, fans and compressors and any and all other portions of the condominium project which are not contained within an apartment and owned entirely by the owner or owners of such apartment or which are not limited common elements under this Declaration; except that general common elements shall not include any portion of the building, fixtures and improvements contained within an apartment, owned entirely by the owner or owners of said apartment, and subject to the sole maintenance responsibility of such owner or owners as provided in this Declaration;

1.5.3. installations of utility facilities, including equipment related thereto, which are for use in connection with other general common elements or which serve more than one apartment;

1.5.4. all apparatus, equipment and installations existing for common use in connection with the building;

1.5.5. such enclosed air spaces in the building which are not included within any individual air space unit;

1.6. "Limited common elements" mean those common elements herein set aside and reserved for use by fewer than all the owners of condominium units.

1.6.1. Each balcony or terrace located on the South side of the building shown as a limited common element on the Condominium Map and identified by number is declared to be a limited common element reserved for the exclusive use of the owner of the apartment unit which is adjacent to such balcony or terrace and through which access to such balcony or terrace is gained.

1.6.2. That portion of the property identified on the Condominium Map as parking areas is declared to be a limited common element reserved for such purposes and for the exclusive use of such owners of condominium units as the Association may designate from time to time; provided that until such time as the Association shall first designate such owners and purposes, said portion of the property shall be deemed to be a general common element.

1.7. "Common expenses" mean and include expenses of administration, operation and management of the condominium units, and the expense of maintenance, repair, or replacement of the general common elements; expenses declared common expenses by provisions of this Declaration or the By-Laws of the Association; all sums lawfully assessed against the apartment units for the benefit of the entire premises; all sums lawfully assessed against the general common elements; and any expenses agreed upon as common expenses by the owners.

1.8. "Entire premises," "property," or "condominium project" mean and include the Subject Land, the building and all other improvements and structures initially or subsequently constructed thereon, together with all rights, easements and appurtenances belonging thereto.

1.9. "Building" means the structure located upon the Subject Land containing eighteen (18) apartment units as more particularly shown on the Condominium Map.

1.10. "Association" means the Timberline Condominium Owners Association, a Colorado non-profit corporation, its successors and assigns, 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 condominium owners.

1.11. "Managing Agent" means that person or firm administering, operating, and managing this condominium project as identified pursuant to Article 13 or Article 14.

1.12. "Map" or "Condominium Map" means the map and any supplements thereto described in Article 2, as the same shall be filed for record in the office of the County Clerk and Recorder, Summit County, Colorado.

1.13. "Declaration" or "Condominium Declaration" means this Declaration together with any supplement or amendment thereto recorded in the office of the County Clerk and Recorder, Summit County, Colorado.

ARTICLE 2

Condominium Map

2.1. A map (hereinafter the "Condominium Map") properly locating condominium units shall be filed in the real property records of Summit County, Colorado. The Condominium Map may be filed for record 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. 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, and all other improvements built on the Subject Land; the floor and elevation plans; the location of the apartments within the building, both horizontally and vertically; the thickness of the common walls and air spaces between or separating the apartments or any other portion of the building; the location of any structural components or supporting elements of the building; the balconies forming part of an apartment unit; and the apartment unit and balcony 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 apartments, the designations, the dimensions of the apartments, 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.

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

2.3. Until such time as all of the units are initially transferred, Declarant reserves 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 easements for utilities, roadways, access and parking areas.

ARTICLE 3

Division of Property into Condominium Units

The condominium project is hereby submitted to this Declaration and divided into the following fee simple estates:

Eighteen (18) separate fee simple estates, each such estate consisting of one apartment together with an appurtenant undivided one-eighteenth (1/18) interest as a tenant in common in and to the common elements. The description of each condominium unit is set forth on Exhibit A attached hereto and by this reference made a part hereof. Each condominium unit shall be identified on the Map by the number shown on Exhibit A.

ARTICLE 4

Encroachments

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

ARTICLE 5

Inseparability of a Condominium Unit

Each apartment and the appurtenant undivided interest in the common elements shall together comprise one condominium unit, shall be inseparable and may be conveyed, leased, devised, mortgaged, or otherwise transferred or encumbered only as a condominium unit.

ARTICLE 6

Description of Condominium Unit

6.1. 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 identifying apartment unit number, followed by the words "Timberline Condominiums" with further reference to the Declaration and the Map to be filed for record.

6.2. 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 identifying apartment unit number, followed by the words "Timberline Condominiums" with further reference to the Map thereof filed for record and the recorded Declaration. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the apartment unit but also the interest in the common elements appurtenant thereto. Each such description shall be construed to include: The right to use of the common elements appurtenant to an apartment unit; a right of ingress and egress for access to and from a public street and upon the property to the owner's apartment unit in, over, and through the stairs, stairways, stair wells, fire escapes, walkways, grounds and driveways; the right to horizontal and lateral support of the apartment unit; and such other rights as shall be appurtenant to and pass with the title to the apartment unit. The initial deeds conveying each condominium unit may contain reservations, exceptions and exclusions which the Declarant deems to be consistent with and in the best interests of all condominium unit owners and the Association.

6.3. All conveyances of condominium units hereafter made, whether by the declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided for in this Declaration, even though no specific reference to such easements appears in any such conveyance.

ARTICLE 7

Separate Assessment and Taxation--Notice to Assessor

Declarant shall give written notice to the Assessor of Summit County, Colorado, of the creation of condominium ownership of the condominium project, as is provided by law, so that each apartment

unit and the undivided interest in the common elements appurtenant thereto, shall be deemed separate parcels and subject to separate assessment and taxation.

ARTICLE 8

Ownership - 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 other form of real property tenancy recognized under the laws of the State of Colorado.

ARTICLE 9

Partition

9.1. 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.

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

ARTICLE 10

Use of Common Elements

10.1. Each owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

10.2. The Association shall have a nonexclusive easement to make such use of the common elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

10.3. 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.

ARTICLE 11

Use and Occupancy

11.1. Each apartment shall be used and occupied solely for the purpose of lodging or as a dwelling by the owner, by the owner's family, guests, invitees and tenants, except that Declarant and its employees, representatives, agents, and contractors may maintain within the condominium project a business and sales office, construction facilities and yards, model units and other facilities required during the construction and sales period of the condominium project.

11.2. The condominium owners shall maintain their respective units in a first class manner.

11.3. No operation or activity shall be permitted within or upon any portion of the condominium project which will violate the provisions of any applicable protective covenants, statute, ordinance, governmental regulation, or reasonable rules and regulations of the Association.

ARTICLE 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 condominium unit with the consent or at the request of the owner thereof, his agent, contractor or subcontractor shall be the basis for filing of 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 any claim or lien against the condominium unit of any other owner or against common elements for construction performed or for labor, materials, services or other items incorporated in or applied to the owner's condominium unit at such owner's request or with his consent. The provisions of this Article 12 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 15.

ARTICLE 13

Administration and Management; Managing Agent

The administration, operation and management of this condominium project shall be governed by the By-Laws of the Timberline Condominium Owners Association. Upon becoming a condominium owner, the owner shall be a member of the Association and shall remain a member for the period of his ownership. The Association shall be initially governed by a Board of Directors as is provided in the By-Laws of the Association. The Association may delegate by written agreement any of its duties, powers and functions to a Managing Agent at an agreed compensation. The initial Managing Agent for the administration, operation and management and rental of the condominium project is Barney Brewer and Company, Dillon, Colorado.

ARTICLE 14

Certificate of Identity

From time to time but not less frequently than annually, there shall be mailed by the Association to each owner and posted prominently upon the property a certificate of identity containing the names and addresses of the directors of the Association and the Managing Agent. The first such certificate shall be mailed and posted on or before July 1, 1971.

ARTICLE 15

Reservation for Access - Maintenance, Repair and Emergencies

15.1. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements therein or accessible therefrom, or at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to any apartment unit or units. Damage to the interior or any part of a condominium unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the common elements or as a result of emergency repairs within or to another apartment by the Managing Agent or Board of Directors shall be a common expense of all of the owners; provided, however, that if such damage is the result of the misuse or negligence of a condominium owner, then such owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored to substantially the same condition of such improvements prior to damage.

15.2. All other maintenance, repairs and replacements for which the Association or the Managing Agent shall be responsible under this Declaration or the By-Laws of the Association, whether located inside or outside of an apartment (unless necessitated by the misuse or negligence of a condominium owner, in which case such expense shall be charged to such condominium owner), shall be the common expense of all of the owners.

ARTICLE 16

Maintenance Responsibility

16.1. An owner shall own the interior non-supporting walls, the materials (such as but not limited to plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the apartment and the interior apartment doors. The owner shall not own lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to in this paragraph 16 as utilities) running through his apartment which serve one or more other apartment units except as a tenant in common with the other owners and such utilities shall not be disturbed or relocated by an owner without written consent and approval of the Board of Directors. Each owner shall, however, be the owner of and be responsible for maintenance and repair of all utilities which serve only his apartment and all fixtures, equipment and utilities installed within his apartment unit, such ownership commencing at that point at which the utilities enter the apartment unit. The right to repair, alter and remodel shall carry the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. An owner shall maintain and keep in repair the interior of his own apartment, including the fixtures and personal property therein.

16.2. The Association shall be exclusively responsible for the management and control of the common elements and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of exterior surfaces of the condominium project, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, windows and exterior doors, the maintenance and repair of utility lines, exterior lights, and all improvements or materials of any kind or nature located within or used in connection with the common elements. The cost of such management, operation, maintenance and repair shall be born as provided in Article 19.

16.3. The Association or any owner shall not in any way alter or remodel any portion of the exterior of the building without the prior written consent of the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the apartment units. Neither the Association nor an 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.

ARTICLE 17

Compliance with Provisions of Governing Instruments

Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the decisions, rules and resolutions of the Association adopted pursuant thereto as the same may be lawfully adopted or amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, 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.

ARTICLE 18

Revocation or Amendment of Declaration

18.1. This Declaration shall not be revoked unless all of the owners and all of 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.

18.2. This Declaration shall not be amended except as otherwise herein provided unless the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the apartment units 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

18.2.1. 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

18.2.2. No amendment shall increase the proportionate expenses chargeable against any condominium unit or owner thereof without the unanimous consent of the condominium owners affected thereby expressed in an amended Declaration duly recorded.

18.3. No revocation or amendment to this Declaration shall be effective until it is filed for record in the office of the County Clerk and Recorder of Summit County, Colorado.

ARTICLE 19

Assessment for Common Expenses

19.1. All owners shall be obligated to pay the assessments imposed by the Board of Directors of the Association to meet the common expenses. The assessments shall be based on an equal allocation of common expenses to each unit. Assessments for the common expenses, including insurance, shall be payable at such time and in such manner as the Board of Directors of the Association may from time to time direct.

19.2. Contribution for monthly assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of the assessment period.

19.3. The assessments made for common expenses shall be based upon the aggregate cash requirements which the Board of Directors of the Association shall from time to time determine are necessary to provide for the payment of all estimated expenses growing out of or connected with the administration, operation and maintenance of the condominium project, including the common elements, which expenses will include, but will not necessarily be limited to, taxes and special assessments not separately assessed; premiums for fire insurance with extended coverage, vandalism and malicious mischief endorsements attached issued in the amount of the maximum replacement value of all of the condominium units (including all fixtures; interior walls and partitions; decorated and finished surfaces of perimeter walls, floors and ceilings; doors, windows and other elements or materials comprising a part of the units); casualty and public liability and other insurance premiums; landscaping and care of grounds; maintenance, repairs and renovations; trash collections; 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 or the By-Laws of the Association; any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus funds; and costs and expenses relating solely to the common elements. The omission or failure of the Board of Directors to fix the assessment for any month shall not be deemed a waiver, modification or a release of the owners from their obligation to pay such assessment.

