

CONDOMINIUM DECLARATION

FOR

MANDALAY 'DOMINIONS CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, MANDALAY ' DOMINIONS, Limited Partnership, hereinafter called "Declarant", is the owner of the real property situate in the City and County of Denver, State of Colorado, which property is described on the attached Exhibit "A," which by this reference is made a part hereof; and

WHEREAS, Declarant desires to establish a condominium complex under the Condominium Ownership Act of the State of Colorado; and

WHEREAS, Declarant has executed plans for the construction of a building complex, which complex and other improvements to be constructed will consist of four designated condominium units; and

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of real property estates consisting of the area or space contained in each of the air space units in the building improvements and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property, which property is hereinafter defined and referred to as the general common elements;

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, 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.

1. Definitions, unless the context shall expressly provide otherwise:

- a. "Unit" means an individual air space unit which is contained within the perimeter walls, floors, ceilings, windows and doors of such unit in the building as shown on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained, but not including any of the structural components of the building located in such unit.
- b. "Condominium Unit" means a unit together with the undivided interest in the general and limited common elements appurtenant thereto.
- c. "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more condominium units.

- d. "General Common Elements" means and includes:
- (1) The Land on which the building is located;
 - (2) The foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, balconies, sidewalks and storage rooms;
 - (3) The yards and gardens;
 - (4) Any installations consisting of equipment and materials making up any central utility services;
 - (5) In general, all apparatus and installations existing for common use;
 - (6) All other parts of the property and improvements necessary or convenient to its existence, maintenance and safety, or normally in common use.
- e. "Limited Common Elements" means those parts of the general common elements which are reserved for the exclusive use of the owner(s) of the condominium unit.
- f. "Entire Premises" or "Property" means and includes the land, the buildings, all improvements and structures thereon, all owned in fee simple absolute, and all rights, easements and appurtenances belonging thereto.
- g. "Project" or "Condominium Project" means all of the land and improvements initially and subsequently submitted to this Declaration.
- h. "Common Expenses" means and includes:
- (1) Expenses of administration, operation and management, maintenance, repair or replacement of the general common elements;
 - (2) Expenses declared common expenses by provisions of this Declaration and the By-laws; and
 - (3) All sums lawfully assessed against the general common elements by the Board of Managers.
- i. "Association" means a Colorado corporation, not for profit, its successors and assigns, the Certificate of Incorporation and By-laws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.
- j. "Building" means the building improvements comprising a part of the property.

- k. "Map" or "Plans" means and includes the engineering survey of the land 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.

2. Condominium Map. The Map shall not be filed for record until the building has been substantially completed in order to permit the location, both horizontally and vertically, of the unit(s) by a registered engineer and a licensed architect. Upon substantial completion of the building, and prior to the first conveyance of a condominium unit, Declarant shall cause to be filed for record a Map. The Map shall depict and show at least the following: The legal description of the land and a survey thereof; the location of the unit within the building, both horizontally and vertically; the perimeter boundary of each unit and the location therein of any structural components or supporting elements of the building; the thickness of the common wall(s) between units and the unit numbers or other designation. The Map shall contain the certificate of a registered engineer certifying that the Map substantially depicts the layout, measurements, and location of the building, the units, the unit designation, the dimensions of such units, the elevations of the unfinished floors and ceilings as constructed and that the Map was prepared subsequent to substantial completion of the improvements depicted.

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

Declarants reserve 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, modification or alterations.

3. Division of Property Into Condominium Units. The real property described in Exhibit "A" and the improvements to be constructed thereon are hereby divided into the following fee simple estates:

Seven separate fee simple estates, each such estate consisting of one unit together with an undivided and equal appurtenant interest in and to the general common elements. The general common elements shall be held in common by the owners thereof. Each condominium unit is described on the attached Exhibit "B", which by this reference is made a part hereof. Each condominium shall be identified on the Map by the number as is shown on Exhibit "B."

4. Limited Common Elements. A portion of the general common elements is reserved for the exclusive use of the owners of the respective units, and such areas are referred to as "limited common elements." The limited common elements so reserved are the balconies appurtenant to some units and the storage areas located in the basement, as depicted in the recorded Map.

5. Inseparability of a Condominium Unit. Each unit and the undivided interest in the general and limited common elements appurtenant thereto shall, together, comprise one condominium unit which shall be inseparable and may be conveyed, leased, devised or encumbered only as a condominium unit.

6. Description of Condominium Unit. Every contract for the sale of a condominium unit written prior to the substantial completion of the condominium unit and prior to the filing for record of the Map may legally describe a condominium unit by its identifying unit number followed by the words, "Mandalay 'Dominions Condominiums", with further reference to the Map thereof to be filed for record and the Declaration to be recorded.

Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit number followed by the words "Mandalay 'Dominions 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 unit but also the general common elements and the limited common elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress throughout the general common elements and for use and support thereof, together with the right to the exclusive use of the limited common elements.

7. Separate Assessment and Taxation - Notice to Assessor. Declarant shall give written notice to the Assessor of the City and County of Denver, Colorado, of the creation of condominium ownership of this property, as is provided by law, so that each unit and undivided interest in the general common elements appurtenant thereof shall be deemed a parcel and subject to separate assessment and taxation.

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

9. Non-Partitionability of General Common Elements and Condominium Units. The general common elements shall be owned in common by all of the owners of the units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. In addition, no right of partition of a condominium unit between the owners thereof shall be permitted.

10. Use of General and Limited Common Elements. Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general and limited common elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other owners.

11. Use and Occupancy. Each unit shall be used and occupied principally for residential purposes by the owner, by

the owner's family, guests, invitees, and tenants, subject, however, to the provisions contained in Paragraph 25 of this Declaration.

12. Easements for Encroachments. If any portion of the general common elements encroaches upon a 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 a unit encroaches upon the general 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. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or the units.

13. 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 unit owner or his agent or his contractor or sub-contractor shall be the basis for filing a lien against the unit of any other unit owner not expressly consenting to or requesting the same, or against the general 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 against the unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request. The provisions herein contained are subject to the rights of the Managing Agent or Board of Managers of the Association as set forth in Paragraph 15.

14. Administration and Management. The administration and management of this condominium property shall be governed by MANDALAY 'DOMMINIONS, Limited Partnership until such time as said Declarant shall deem it appropriate, but not later than January 1, 1980, to have created Mandalay 'Dominions Condominiums, a Colorado non-profit corporation hereinafter referred to as the "Association", to assume full management responsibilities according to the terms hereof. An owner of a condominium unit shall be a member of the Association and shall remain a member for the period of his ownership.

There shall be recorded from time to time a certificate of identity of the persons then comprising the management body (Managers and Officers), together with identity of the Managing Agent, if any. Such certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith. The first such certificate shall be recorded on or before January 1, 1980.

15. Reservation for Access - Maintenance, Repair and Emergencies. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common

elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general common elements or to another unit or units.

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

16. Owners' Maintenance Responsibility of Unit. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the interior non-supporting wall, 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, ceiling and floors within the unit and the unit doors and windows. The owner shall not be deemed to own lines, pipes, wires, conduits, or systems (which for brevity are hereafter referred to as "utilities") running through his unit which serve one or more other units, except as a tenant in common with the other owners. Such utilities shall not be disturbed or relocated by an owner without written consent and approval of the Board of Managers. Such 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 unit, including the unit commencing at a point where the utilities enter the unit shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament.

Each owner of a unit shall be responsible to maintain in addition to their unit space the balconies appurtenant to this unit and will in addition be required to maintain the storage area assigned to his unit, which is designated as a limited common element, as depicted in the recorded Map of Mandalay 'Dominions Condominiums.

The obligation to maintain limited common elements shall be defined as the same standard that applies to the obligation of an owner to maintain conveyed units.

17. Compliance With Provisions of Declaration, By-laws of the Association. Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and By-laws of the Association, and the decisions and resolution of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the Managing Agent or Board

of Managers in the name of the Association on behalf of the owners or in a proper case, by an aggrieved owner.

18. Revocation or Amendment to Declaration. This Declaration shall not be revoked unless all of the owners and all of the holders of any recorded mortgage or 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. This Declaration shall not be amended unless the owners representing an aggregate ownership interest of sixty-six percent (66%) or more of the general common elements and all of the holders of any recorded mortgage or 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 the percentage of the undivided interest in the general 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 unit owners expressed in an amended Declaration duly recorded.

19. Assessment for Common Expenses. All owners shall be obligated to pay the estimated assessments imposed by the Board of Managers of the Association or the Managing Agent to meet the common expenses. The assessments shall be made pro-rata according to each owner's percentage interest in and to the general common elements, except for hazard insurance premiums. Assessments for insurance premiums shall be based upon that proportion of the total premium(s) that the insurance carried on a condominium unit bears to total coverage. The limited common elements shall not be maintained as general common elements, and owners having exclusive use thereof shall be subject to special charges and assessments therefor. Assessments for the estimated common expenses, including insurance, shall be due monthly in advance on the first day of each month. The Managing Agent or Board of Managers shall prepare and deliver or mail to each owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments are made.

Contribution for monthly assessments shall be pro-rated if the ownership of a condominium unit commences on a day other than the first day of the month.

The assessments made for common expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Board of Managers of the Association or condominium unit owners, including Declarant, determine to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things, expenses of management; taxes and special assessments, until separately assessed; premiums for fire insurance with extended coverage and vandalism and malicious mischief with 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; door, 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; common lighting and heating; repairs and renovations; trash collections; wages; water and sewer charges; legal and accounting fees; management fees; expenses and liabilities incurred by the Managing Agent or Board of Managers under or by reason of this Declaration; for 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. The omission or failure of the Board of Managers or the Managing Agent to fix the assessment for any month shall not be deemed a waiver, modification or release of the owners from their obligation to pay.

20. Insurance. The Managing Agent or Board of Managers shall obtain and maintain at all times insurance of the type and kind provided hereinabove and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property, similar in construction, design and are issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in a blanket policy form naming the Association or the Managing Agent the insured, as attorney-in-fact (for the condominium unit owners), which policy or policies shall identify the interest of each condominium unit owner (owner's name, unit number, building symbol or designation, the appurtenant undivided interest in the general common elements), and which policy or policies shall provide a standard, non-contributory mortgage clause in favor of each first mortgagee, and that it cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice is first given to each owner and each first mortgagee. Upon proper request by an owner or mortgagee, the Managing Agent or Board of Managers shall furnish a certified copy of such blanket policy and the 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 of any provision 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.

Insurance coverage on the furnishings and other items of personal property belonging to an owner and casualty and public liability coverage within each individual unit shall be the responsibility of the owner thereof.

21. Lien for Non-Payment of Common Expenses. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit shall constitute a lien on such

unit superior (prior) to all other liens and encumbrances, except only for:

- a. Tax and special assessment liens on the unit 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 obligators sums as may be provided by such encumbrance.

To evidence such lien, the Board of Managers or Managing Agency shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice shall be signed by one of the Board of Managers or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure against the defaulting owner's condominium unit by recording of a notice or claim thereof. In any such foreclosure the owner shall be required to pay the costs and expenses of such proceeding, including but not limited to attorney's fees, costs and expenses. The owner shall also be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure, and the Association or Managing Agent shall be entitled to a Receiver to collect the same. The Association shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

Any encumbrancer holding a lien on a condominium unit may pay, but shall not be required to 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.

The Association, or Managing Agent, shall report to the mortgagee of a condominium unit any unpaid assessments remaining unpaid for longer than sixty (60) days after the same are due.

22. Owners' Obligation for Payment of Assessments. The amount of the common expenses assessed against each condominium unit shall be the personal and individual debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same. No owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit. In any such proceeding the owner shall be required to pay the costs and expenses of such proceedings, including but not limited to attorney's fees, costs and expenses.

23. Liability for Common Expense Upon Transfer of Condominium Unit is Joint. Upon payment of a reasonable fee not to exceed Twenty-Five (\$25.00) Dollars and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium unit, the Association or its Managing Agent, then by the financial officer of the Association, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advance payments or for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association or Managing Agent in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee not to exceed Twenty-Five (\$25.00) Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Managers setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessment, the date that such assessment becomes due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. Unless such request for such a statement shall be complied with within ten (10) days of such request, then such requesting grantee shall not be liable for, nor shall the unit conveyed be subject to, a lien for any unpaid assessments against the subject unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the condominium units by Declarant.

Notwithstanding the foregoing, the holder of a first mortgage or first Deed of Trust on a condominium unit shall not be liable for any such assessment, charge, fine or penalty, and the lien for any such assessments, charges, fines or penalties shall be junior to any lien or encumbrance on a condominium unit taken in good faith and for value and perfected by recording in the office of the County Clerk and Recorder prior to the time a notice of such lien is recorded in said office. Any mortgagee holding a lien on a condominium unit may pay, but shall not be required to pay, any unpaid common assessment payable with respect to such unit, and upon such payment, such encumbrancer shall have a lien on such unit for the amount paid of the same rank as the lien of his mortgage or encumbrance without the necessity of having to record a notice or claim of such lien.

24. 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 condominium unit may create junior mortgages on the following conditions:

- (1) That any such junior mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses and other obligations created by this Declaration, the Certificate of Incorporation and the By-laws of the Association; and
- (2) That 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 from all insurance policies upon said premises, which insurance policies were effected and placed upon the mortgaged premises by the Association or Managing Agent. Such release shall be furnished forthwith by a junior mortgagee upon written request of one or more of the Board of Managers of the Association or the Managing Agent.

25. Right of First Refusal by Owners. In the event any owner of a condominium unit, other than the Declarant, shall wish to sell, lease or rent the same and shall have received a bona fide offer therefor from a prospective purchaser, lessee or tenant, the remaining unit owners shall be given written notice thereof, together with an executed copy of such offer and the terms thereof. The right of first refusal herein provided shall not apply to leases, sub-leases or tenancies having a term of less than sixty-one (61) days, but any such lease or tenancy shall not be renewable nor extended except by compliance with the provisions herein. Such notice and copy shall be delivered to the Board of Managers or Managing Agent for all of the owners. The remaining unit owners, through the Board of Managers or Managing Agent or a person named by them shall have the right to purchase, lease or rent the subject condominium unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase, lease or rent is given to the selling, leasing or renting owner and a matching down payment or deposit is provided to the selling, leasing or renting owner during the ten (10) day period immediately following the delivery of the notice of a bona fide offer and copy thereof to purchase, lease or rent.

In the event any owner, other than the Declarant, shall attempt to sell, lease or rent his condominium unit without affording to the other owners the right of first refusal herein provided, such sale, lease or rental shall be

refusal herein provided, such sale, lease or rental shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser, lessee or tenant who shall be subject to eviction and removal, forcibly or otherwise, with or without process of law.

The sub-leasing or sub-renting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under and by the provisions contained in this Declaration shall continue, notwithstanding the fact that he may have leased or rented 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 condominium unit to a bona fide trust deed, mortgage or other security instrument.

The failure of or refusal by the owners to exercise the right to so purchase, lease or rent shall not constitute or be deemed to be a waiver of such right to purchase, lease or rent when an owner receives any subsequent bona fide offer from a prospective purchaser, lessee or tenant.

Except as is otherwise provided in Paragraph 26, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each and every conveyance by a grantor(s) of a condominium unit shall be for all purposes deemed to include and 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.

26. Exemption from Right of First Refusal. In the event of any default on the part of any owner under any first mortgage which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Paragraph 25 and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium unit shall be thereupon and thereafter subject to the provisions of this Declaration and the By-laws of the Association. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure), shall be the then holder of the first mortgage or its nominee, the said holder or nominee may thereafter sell, convey, and/or lease the condominium unit free and clear of the provisions in Paragraph 25, but its grantee shall thereupon and thereafter be subject to all of the provisions hereof.

The following transfers are also exempt from the provisions of Paragraph 25:

- a. The transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s).
- b. The transfer of a deceased's interest to a devisee 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 to 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 all or any part of an owner's interest to a corporation; provided, however, that at least fifty percent (50%) of the stock of such corporation is thereafter owned and retained by that owner. A transfer of stock by one or more shareholders of a corporation owning a condominium unit, provided, however, that at least fifty percent (50%) of the stock is retained by the shareholders of the corporation.

Such persons, owners or grantees acquiring an interest shall be subject to all of the provisions of Paragraph 25, except as is provided herein.

27. Certificate of Compliance - Right of First Refusal.

Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium unit, the Managing Agent or Board of Managers 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 that:

- a. With respect to a proposed lease or sale under Paragraph 25, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;
- b. With respect to a deed to a first mortgagee or its nominee, pursuant to Paragraph 26, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 25.

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

28. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of the Association as the attorney-in-fact to deal with the property upon its destruction, repair or obsolescence.

Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint Mandalay 'Dominions Homeowners' Association, a Colorado corporation, not for profit, or Managing Agent, their true and lawful attorney on their name, place and stead for the purpose of dealing with the property upon its destruction or obsolescence as is hereinafter provided. As

attorney-in-fact, the Association, by its President and Secretary, or Managing Agent, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraph means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association or the Managing Agent for the purpose of repair, restoration or replacement unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter:

- a. In the event of damage or destruction due to fire or other disaster, the insurance proceeds if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association or the Managing Agent shall have full authority, right and power as attorney-in-fact, to cause the repair and restoration of the improvement(s).
- b. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than fifty percent (50%) of all of the condominium units (the whole property), not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, or Managing Agent, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense and shall be due and payable within thirty (30) days after written notice thereof. The Association or Managing Agent shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvement(s) 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 condominium unit and may be enforced and collected as is provided in Paragraph 21. In addition thereto, the Association or Managing Agent, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association or Managing Agent shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association or Managing Agent,

as attorney-in-fact. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association or Managing Agent, as attorney-in-fact, in the following order:

- (1) For payment of the balance of the lien of any first mortgage;
- (2) For payment of taxes and special assessments, 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 condominium unit owner.

- c. If more than fifty percent (50%) of all of the condominium units (the whole property), not including land, are destroyed or damaged and if the owners representing an aggregate ownership interest of sixty-six and two-thirds percent (66 2/3%) or more of the general common elements do not voluntarily, within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association or Managing Agent shall forthwith record a notice setting forth such fact or facts and upon the recording of such notice by the Association's President and Secretary or Managing Agent, the entire remaining premises shall be sold by the Association or Managing Agent, as attorney-in-fact, for all of the owners, free and clear of the provisions contained in this Declaration, the Map and By-laws. The insurance settlement proceeds shall be divided by the Association or Managing Agent, according to each condominium unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the condominium units. Each such account shall be in the name of the Association or Managing Agent, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account the Association or Managing Agent, as attorney-in-fact, shall forthwith use and disburse the total amount (of each) of such accounts without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the condominium unit represented by such separate account. Thereafter each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed,

without contribution from one account to another, by the Association or Managing Agent, as attorney-in-fact, in the same order as is provided in sub-paragraph b(1) through (5) of this paragraph. The provisions contained in this subparagraph shall not hinder the protection given to a first mortgagee under a mortgage endorsement.

If the owners representing an aggregate ownership interest of sixty-six and two-thirds percent ($66 \frac{2}{3}\%$), or more, of the general common elements 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 each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association or Managing Agent shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvement(s) 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 the lien on his condominium unit and may be enforced and collected as is provided in Paragraph 21. In addition thereto, the Association or Managing Agent, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association or Managing Agent, shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association or Managing Agent. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association or Managing Agent, as attorney-in-fact, for the same purposes and in the same order as is provided in sub-paragraph b(1) through (5) of this paragraph.

- d. The owners representing an aggregate ownership interest of eighty-five percent (85%) or more, of the general common elements may agree that the condominium units are obsolete and adopt a plan for the renewal and reconstruction, which plan has the unanimous approval of all first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such a plan for renewal or reconstruction may give written notice to the Association or Managing Agent, within fifteen (15) days after the adoption of such plan

that such unit shall be purchased by the Association or Managing Agent, for the fair market value thereof. The Association or Managing Agent shall then have fifteen (15) days within which to cancel such plan. If such a plan is not cancelled, then the condominium unit shall be purchased according to the following procedures:

If such owner and the Association or Managing Agent can agree on fair market value thereof, then such sale shall be consummated within thirty (30) 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 (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser who shall be a member of the Denver Board of Realtors. 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 (to be selected from the Denver Board of Realtors). 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 appraiser (to be selected from the Denver Board of Realtors) to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two persons (each of whom shall be a member of the Denver Board of Realtors) and from the names of the four persons so nominated one shall be drawn by lot by any judge or any court of record in Colorado, and the name so drawn shall be umpire. The nomination from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owner. The sale shall be consummated within fifteen (15) days thereafter and the Association or Managing Agent, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraph b(1) through (5) of this paragraph.

e. The owners representing an aggregate ownership interest of eighty-five percent (85%), or more, of the general common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan (agreement) must have the unanimous approval of every first mortgagee. In such instance, the Association or Managing Agent, shall forthwith record a notice setting forth such fact or facts and upon the recording of such notice by the Association's President and Secretary or Managing Agent, the entire premises shall be sold by the Association or Managing Agent, 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 sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association or Managing Agent, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account the Association or Managing Agent, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in sub-paragraph b(1) through (5) of this paragraph.

29. Personal Property for Common Use. The Association or Managing Agent 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, and the beneficial interest in any such property shall be owned by the condominium owners in the same proportion as their respective interests in the general common elements and shall not be transferable except with the 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 without any reference thereto. Each owner may use such property in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the other owners. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed condominium unit.

30. Registration by Owner of Mailing Address. Each owner shall register his mailing address with the Association or Managing Agent, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an owner shall be sent by either Registered or Certified Mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Managers of the Association or the Association or Managing Agent shall be sent by Certified Mail, postage

31. Period of Condominium Ownership. The separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner and as is provided in Paragraph 18 of this Declaration, or until terminated in the manner and as is provided in sub-paragraphs "c" or "e" of Paragraph 28 of this Declaration.

- a. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or 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 and to all other provisions of law.
- c. That 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.

MANDALAY DOMINIONS, LIMITED PARTNERSHIP

By May C. Rae
May C. Rae, the general partner

STATE OF COLORADO)
) ss.
City and County of Denver)

The foregoing instrument was acknowledged before me this 26 day of June, 1979, by Mary C. Rae as general partner of Mandalay Dominions, Limited Partnership.

Calvin A. Mann
Notary Public

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