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County of Jefferson State of Co.

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CONDOMINIUM DECLARATION

FOR

ESTES SQUARE

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RECITALS

1. The undersigned, Frank Plaut and William Gerber, Sr. (hereinafter referred to as "Declarant") are the owners, as joint venturers doing business under the name of Estes Square, of the real property situate in the County of Jefferson, State of Colorado described on Exhibit A attached hereto.

2. The undersigned desire to establish a condominium project under the Colorado Condominium Ownership Act, as amended.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, servitudes, restrictions, liens, covenants and conditions, which are established, declared and adopted for the purpose of promoting the social welfare, common good and general welfare of the people of the community, protecting the value and desirability and enhancing the safety and habitability of the said real property and to bring about civic betterments and social improvements, to run with the said lands and be binding upon all parties having any right, title or interest in and to the described real property or any part thereof, their heirs, personal representatives, successors and assigns, and to inure to the benefit of each owner thereof.

ARTICLE I

Definitions

1.1 "Unit" means one individual air space which is contained within the perimeter walls, floors, ceilings, windows and doors of each unit 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 buildings, if any, located within the unit.

1.2 "Condominium Unit" means the fee simple interest and title in and to a unit together with the undivided interest in the general common elements and the appurtenant limited common elements thereto.

1.3 "Owner" means a person, persons, firm, corporation, partnership, association or other legal entity, or any combination thereof, who own(s) an interest in one or more condominium units. An owner may include a purchaser under a contract for sale.

1.4 "General Common Elements" means and includes the real property described in Exhibit "A" and the improvements thereon except the units; the structural components of the buildings; such improvements as may be provided for common use; service streets; green areas; irrigation equipment and well; provided, however, that each unit owner whose unit has sole access to a court, terrace or deck, if any, shall have an easement for the exclusive use thereof;

all other parts of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air above such land, all of which shall be owned, as tenants in common, by all of the owners of the separate units, each owner of a unit having an undivided interest in such general common elements as is provided hereinafter. 2

1.5 "Declaration" means this Declaration and supplements thereto, if any.

1.6 "Limited Common Elements" means those parts of the general common elements which are either limited to and reserved for the exclusive use of an owner of a condominium unit or are limited to and reserved for the common use of more than one but fewer than all of the condominium unit owners.

1.7 "Condominium project" or "project" means all of the land and improvements submitted by this Declaration.

1.8 "Common expenses" means and includes (i) expenses of administration, operation and management, repair or replacement of the common elements; (ii) expenses declared common expenses by the provisions of this Declaration or the By Laws of the Association; (iii) all sums lawfully assessed against the general common elements by the Board of Directors or the Association; (iv) expenses agreed upon as common expenses by the Association of unit owners; and (v) reserves for maintenance, repairs and replacement of the common elements which must be replaced periodically.

1.9 "Association" means the Association formed as a Colorado not-for-profit corporation bearing the name of this condominium project, the Articles of Incorporation and By Laws of which shall govern the administration of this condominium property, the members of which Association shall be all of the owners of the condominium units.

1.10 "Map" or "Condominium Map" means and includes the engineering survey described in Section 2.3.

ARTICLE II

Condominium Units

2.1 Division of Property Into Condominium Units. The real property described in Exhibit "A" and the improvements thereon are hereby divided into the fee simple estates as is set forth on the attached Exhibit "B" which by this reference is made a part hereof. Each such estate shall consist of the separately designated units and the undivided interest in and to the general common elements appurtenant to each unit as set forth therein.

2.2 Limited Common Elements. A portion of the general common elements is reserved for the exclusive use of the individual owners of the respective units, and such areas are referred to as "limited common elements". The limited common elements so reserved shall be identified on the Map; provided, however, that any court, patio, balcony or deck which is accessible from, associated with and which adjoins a unit and any other limited common elements so identified on the Map shall, without further reference thereto, be used in connection with such unit to the exclusion of the use thereof by the other owners of the general common elements, except by invitation. The deck which is accessible from and adjoins Units 22F and 23F shall be considered a limited common element appurtenant to such units to the extent depicted on the Map. The parking space

or spaces assigned to a unit as set forth on Sheet 1 of the Map shall be a limited common element appurtenant to the unit to which assigned. All of the owners of condominium units in this condominium project shall have a non-exclusive right in common with all of the other owners to the use of sidewalks, pathways, driveways and streets located within the entire condominium project. No reference thereto whether such limited common elements are exclusive or non-exclusive need to be made in any deed, instrument of conveyance or other instrument. 3

2.3 Condominium Map. The Condominium Map shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the building(s); the floor and elevation plans; the location of the unit within the building, both horizontally and vertically; the thickness of the common walls between or separating the units; the location of any structural components or supporting elements and the building symbol. The Map shall contain the certificate of a registered professional engineer or licensed architect, or licensed land surveyor certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the units, the unit designations, building symbols and the elevations of the unfinished floors. In interpreting the Map, the existing physical boundaries of each separate unit and any of the limited common elements as constructed shall be conclusively presumed to be its boundaries.

2.4 Description of Condominium Units.

2.4.1 Every contract for the sale of a condominium unit written prior to the filing for record of the Map or Declaration may legally describe a condominium unit by its identifying unit designation, the building symbol, followed by the name of this condominium. The location of such condominium unit shall be depicted on the Map subsequently filed for record.

2.4.2 Subsequent to the recording of these Declarations and the Map, every contract, deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit in the following manner:

DESCRIPTION

Condominium Unit _____ [assigned number]
according to the Map thereof filed for
record with the Clerk and Record of
Jefferson County on April 11, 1978, as
Reception No. * [this Declaration's
Reception Number] and as described in
Condominium Declaration filed on the same
date with the preceding reception number.

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2.4.3 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 perpetual non-exclusive easement for ingress and egress to and from an owner's unit and exclusive use of the limited common elements appurtenant to his unit.

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

2.6 Separate Assessment and Taxation of Condominium

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Units - Notice Assessor. Declarant shall give written notice to the County Assessor of the creation of condominium real property ownership interests in this property, as is provided by law, so that each unit and the undivided interest in the general common elements appurtenant thereto shall be deemed a parcel and subject to separate assessments and taxation.

2.7 Non-Partitionability. The general common elements shall be owned in common by all of the owners of the units and shall remain undivided, and no owners shall bring any action for partition or division of the general common elements. Nor shall any owner bring any action for partition or division of any condominium unit.

2.8 Easement for Encroachments. If any portion of the general common elements encroaches upon a unit or units, or 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 on the units for purposes of marketability of title or other purposes. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of a building, by error in the Condominium Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the project or any part thereof.

2.9 Termination of Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner, his agent, his contractor or subcontractor shall be the basis for filing of a lien against the general common elements or against the unit of any other unit owner who did not expressly consent to or request the services or materials. 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 an owner's unit at such owner's consent or request.

2.10 Right to Combine Units. Declarant and the unit owners shall have the right to (i) physically combine the space within one unit with the space within one or more adjoining units or (ii) to combine a part of or combination of parts of the space within one unit with part or parts of the space within one or more adjoining units. Any such physical changes to units shall be reflected by an amendment to Exhibit "B" and the Map, which amendments shall set forth the reapportioned undivided interests of the affected units; provided, however, that no such physical changes shall be made without the written consent of the mortgagee(s) of the affected unit(s); and provided, further, that the cost and expense incurred for legal, architectural or engineering fees relative to preparation of such amendment shall be borne by that person requesting such physical change to the unit(s); and lastly, provided that the Board of Directors of the Association shall approve the combination by any Unit owner, except Declarant.

ARTICLE III

Transfers of Condominium Units

3.1 Form of Ownership - Title. A condominium unit may be held and owned in any real property tenancy relationship recognized under the laws of the State of Colorado. 5

3.2 Right of First Refusal.

(a) In the event any owner of a condominium unit other than the Declarant wishes to sell or lease such unit and receives a bona fide offer therefor from a prospective purchaser or tenant, such owner shall give a written notice thereof to the agent for service of process of the Association together with an executed copy of such offer. The Association shall have the right to purchase or lease the condominium unit upon the same terms and conditions as set forth in the offer; provided, however, that written notice of such election to purchase or lease and a matching down payment for deposit is given to the selling or leasing owner on or before five days immediately following the delivery of the notice of the bona fide offer and copies thereof.

(b) If any owner other than Declarant attempts to sell or lease his condominium unit without affording to the Association the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no possessory rights, no title or interest whatsoever upon the intended purchaser or lessee.

(c) Subleasing or subrenting shall be subject to the same limitations as are applicable to leasing. All liabilities and obligations of the owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

(d) The right of first refusal reserved herein shall not affect the right of an owner to subject his interest to a trust deed, mortgage or other security instrument, but the provisions regarding encumbrances shall apply.

(e) The right of first refusal shall not apply to leases or subleases having a term of less than three years, but any renewal or extension thereof which would extend the total tenancy beyond three years shall be subject to such right.

(f) Failure of or refusal to exercise the right to so purchase or lease shall not constitute or be deemed a waiver of such right to purchase or lease when the Association receives any subsequent bona fide offer from a prospective purchaser or tenant.

(g) The right of first refusal, as provided herein, shall extend for and run for a period of twenty-five (25) years, from the date of recording this Declaration.

(h) Except as otherwise provided in Section 3.3 and except upon a transfer of title to a Public Trustee or to a mortgagee, each grantor of a condominium unit, subsequent to the original conveyance thereof by Declarant, in 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" herein provided; provided, however, that grantor's failure to do so shall in no way affect such right.

3.3 Exempt Transfers.

(a) In the event of any default on the part of any owners under any first mortgage which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a bona fide deed to the first mortgagee in lieu of

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such foreclosure, shall be made free and clear of the provisions of Section 3.2 and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium unit shall thereupon and thereafter be subject to the provisions of this Declaration and By Laws. 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, said holder or nominee may thereafter sell and convey the condominium free and clear of the provisions of Section 3.2 but its grantee shall thereupon be subject to all of the provisions thereof.

(b) In addition to transfers by Declarant, the following transfers are exempt from the provisions of Section 3.2 provided, however, that further transfers shall be subject thereto except as provided herein:

1. The transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s).
2. The transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws.
3. 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.
4. The transfer of a corporation's interest to the persons formerly owning the stock of the corporation as a result of a dissolution, or a transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least fifty (50) percent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the condominium unit.

(c) If an owner of a condominium unit can establish to the satisfaction of the Association that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Section 3.2.

(d) Upon written request of any prospective transferor, purchaser, tenant, or an existing or prospective mortgagee of any condominium unit, the 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 that:

1. With respect to a proposed lease or sale under Section 3.2 that proper notice was given by the selling or leasing owner and that the Association did not elect to exercise its option to purchase or lease.
2. With respect to a deed to a mortgagee or its nominee in lieu of foreclosure, and a deed from each mortgagee or its nominee, pursuant to Section 3.3(a), that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Section 3.2.
3. 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 Section 3.2, such a certificate shall be conclusive evidence of the facts contained therein.

ARTICLE IV

Rights, Easements and Obligations

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4.1 Owner's Rights in General Common Elements. Subject to the other provisions of the Declaration, each owner shall have a non-exclusive right to use and enjoy the general common elements, consistent with the rights of use and enjoyment of other owners.

4.2 Owner's Rights in Limited Common Elements. Subject to the other provisions of the Declaration, each owner shall have an exclusive right to use and enjoy the limited common elements designated herein or on the Map as appurtenant to the condominium unit owner by such owner.

4.3 Owner's Rights in Unit. Subject to the other provisions of this Declaration, each owner shall have full and complete dominion of his unit, and each owner shall have the exclusive right to use and enjoy the same.

4.4 Owner's Maintenance Responsibility for His Unit.

(a) For maintenance purposes, an owner shall be obligated to keep in good repair and condition the interior walls, 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) which make-up the finished surfaces of the perimeter and interior walls, ceilings and floors within his unit, including all doors and windows. The lines, pipes, wires, conduits or systems (which are hereafter referred to as "utilities") running through his unit which serve one or more other units are general common elements. Such utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Board of Directors. An owner's right to repair, alter and remodel the interior of his unit shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality.

(b) An owner shall maintain and keep in repair the interior of his own unit, including the fixtures thereof. All fixtures and equipment installed within the unit commencing at a point where the utilities enter the unit shall be maintained and kept in good repair and condition 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. An owner shall always keep the limited common elements appurtenant to his unit in a clean and sanitary condition.

4.5 Access to Units for Maintenance, Repair and Emergencies.

(a) The owners shall have the irrevocable right, to be exercised by the 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 maintenance, repair or replacement of any of the general common elements therein or accessible therefrom; provided, however, that such right of access shall be immediate for making emergency repairs therein in order to prevent damage to the general common elements or to another unit.

(b) Damage to the interior or any part of a unit resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of emergency repairs within another unit shall be a common expense of all of the owners; provided, however, that if such damage is caused by negligent or tortious act of a unit owner, members of his family, his agent, employee, invitee, licensee or tenant, then such unit owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored substantially to the same condition in which they existed prior to the damage. All main-

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tenance, repairs and replacements of the general common elements, whether located inside or outside of units (unless necessitated by the negligence, misuse or tortious act of a unit owner, in which case such expense shall be charged to such unit owner), shall be the common expense of all of the owners. 8

4.6 Owner's Easement for Access, Support and Utilities. Each owner shall have a non-exclusive easement in and over general common elements, including those that are within the unit of another owner, for horizontal and lateral support of the unit which is part of his condominium unit and for utility service to that unit, including water, sewer, gas, electricity, telephone and television service.

4.7 Easements Deemed Appurtenant. The easements and rights herein created for an owner shall be appurtenant to the condominium unit of that owner and any transfer, assignment, sublease, mortgage or deed of trust and other instruments affecting the title to a condominium unit shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appear in any such instrument.

4.8 Owner's Compliance with Declaration and Other Governing Instruments. Each owner shall comply with the provisions of this Declaration, the Articles of Incorporation and By Laws of the Association, and the Rules and Regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully adopted and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Board of Directors in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

ARTICLE V

Association

5.1 Formation. The interests of all condominium unit owners in the general common elements and in the limited common elements shall be administered and furthered by Estes Square Condominium Association, Inc., a Colorado Non-Profit Corporation.

5.2 Regular Membership. There shall be one membership in the Association for each condominium unit, which membership shall be appurtenant to each condominium unit. The owner of a condominium unit shall automatically be the owner of the membership appurtenant to that condominium unit, and title to and ownership of the membership for that condominium unit shall automatically pass with each transfer of a condominium unit. Each owner of a condominium unit shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his condominium unit. If the interest in a condominium unit is held by more than one person or entity, the membership appurtenant to that condominium unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as the interest to the condominium unit is held.

5.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to any executive committee, or to an executive manager or director for the Association.

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Members of the Board of Directors shall be elected annually by owners. There shall be three members of the Board of Directors, all of whom shall be owners of condominium units elected by owners of condominium units. 9

5.4 Voting of Owners. Each owner shall be entitled to cast votes based on the appurtenant percentage undivided interest in the general common elements assigned to his unit. Voting by proxy shall be permitted.

5.5 Notices. Except as a greater period is specified in this Declaration, each owner shall be entitled to at least fifteen (15) days' notice of any meeting at which such owner has the right to vote. Notices of meetings shall be in writing and shall state the date, time and place of the meeting and shall indicate each matter to be voted on at the meeting which is known to the Association at the time notice of the meeting is given. Any notice shall be deemed given and any information or material shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event, when such party actually received such notice, information or material. Any notice, information or material shall be deemed properly addressed to an owner if it is addressed to the name and address shown on the Association registered address form to be completed by such owner and furnished to the Association or, if a name and address is not so furnished, if it is addressed "To the Owner" at the address of the condominium unit of such owner.

5.6 Record Date. The Board of Directors of the Association shall have the power to fix in advance a date as a record date for the purpose of determining owners entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of owners for any purpose. The owners existing on any such record date shall be deemed the owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of owners is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which the notice of such meeting is first given to any owner shall be deemed the record date for the meeting.

5.7 Quorums. Fifty-one percent of the votes entitled to vote on any matter present, in person or by proxy, at a meeting to consider a matter, or actually voting on the matter shall constitute a quorum for consideration of that matter. If a quorum is established for consideration of a matter, except as a greater percentage of votes is required under a specific provision of this Declaration, a majority of the votes cast on the matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.

5.8 Articles of Incorporation and By-Laws. The purposes and powers of the Association and the rights and obligations with respect to owners or memberships set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but no such provisions shall be, at any time, inconsistent with any provision of this Declaration.

5.9 Rules and Regulations. The Association may make and enforce reasonable and uniformly applied rules and regulations

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governing the use of units and of the general and limited common elements.

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ARTICLE VI

Rights and Obligations of Association

6.1 Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the owners of all condominium units and each of them to manage, control and deal with the interest of such owner so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the project upon its destruction as hereinafter provided, and to deal with and handle insurance and insurance proceeds as hereinafter provided. The acceptance by any person or entity of any interest in any condominium unit shall constitute an appointment of the Association as an attorney-in-fact as provided above.

6.2 General Common Elements and Expense.

6.2.1 Maintenance. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the general common elements. Without limiting the generality of the foregoing, said obligations shall include the keeping of such general common elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such general common elements which might impair access to the project or to the unit; keeping the project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the general common elements. Limited common elements shall be maintained as general common elements, and owners having exclusive use thereof shall not be subject to any special charges or assessments for the repair or maintenance thereof.

6.2.2 Capital Improvements. The Association shall be responsible to make all necessary or desirable alterations, additions, betterments or improvements to or on the general common elements. There shall be no additions, alterations or improvements of or to the general and limited common elements by the Association which would increase the total assessments to all owners by more than \$5,000 in any one calendar year without prior approval of a majority of the owners. Such approval shall be expressed by a vote in favor thereof by the owners of a majority in interest at a special or regular meeting of Association members. Such expenditure(s) shall be a common expense. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any general or limited common element or common personal property.

6.2.3 Utilities. Water and heating costs for the project (personal use by the unit owner or occupant and Association use for the general and limited common elements) shall be considered a common expense. Electrical costs associated with the general and limited common elements shall be considered a common expense.

6.3 Insurance.

6.3.1 The Board of Directors shall obtain and maintain, to the extent obtainable, the following insurance: (i) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the entire condominium improvements and any other property, the nature of which is a general common

element (including all of the units, fixtures therein initially installed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by unit owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation, and which shall contain a standard non-contributory mortgage clause in favor of each mortgagee of a condominium unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Board of Directors hereinafter set forth in Article VIII, (ii) public liability insurance in such limits as the Board of Directors may from time to time determine, covering each member of the Board and each unit owner. Such public liability coverage shall also cover cross liability claims of one insured against the other. //

6.3.2 All policies of public liability insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least ten days' prior written notice to all of the insured, including mortgagees. Duplicate originals of all policies and renewals thereof together with proof of payments of premiums shall be delivered to all mortgagees at least ten days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the condominium unit owners, which policy or policies shall identify the interest of each condominium unit owner (owner's name, unit number and building designation).

6.3.3 Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the entire condominium improvements, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than ninety (90) percent of the full replacement cost. Determination of maximum replacement value (of each unit) shall be made annually by a written appraisal to be furnished by the insurance company and each mortgagee shall be furnished with a copy thereof within thirty days after receipt of such written appraisal.

6.3.4 Unit owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided, further, that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner.

6.3.5 Insurance coverage on furnishings and other items of personal or other property belonging to an owner and public liability coverage within each unit shall be the sole and direct responsibility of the unit owner thereof, and neither the Board of Directors nor the Association shall have any responsibility therefor.

6.4 Record Notice of Managing Agent. The Association shall cause to be recorded a statement identifying and setting forth the location of any managing agent. Any change in a managing agent or its address shall also be evidenced by a recorded statement. Such recorded statement shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of time elapsed since date thereof. The first such recorded statement shall be recorded on or before ninety (90) days

after recording this Declaration.

6.5 Association Right to Acquire Additional Property. The Association may acquire and hold for the benefit of all of the condominium unit owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the condominium unit owners in the same proportions as their respective interests in the general common elements, and such interest therein shall not be transferable except with a conveyance of a condominium unit. 12

ARTICLE VII

Assessments

7.1 Budget Determination and Assessments. The total amount required to be raised for the payment of common expenses shall be determined for each fiscal year of the Association by its Board of Directors. The budget shall be prepared, and the assessment determined at least two months in advance of the beginning of the fiscal year to which applicable.

To determine the total amount required to be raised, the Board of Directors shall prepare the budget for the fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses which shall be payable, and any estimated income and other funds which will be received, and the estimated total amount required to be raised by assessments to cover costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a copy of the budget to any owner upon request.

The total amount required to be raised by assessments for any fiscal year shall be that amount necessary to cover the costs and expenses of fulfilling the obligations of the Association made in connection with or contemplated under any previously approved budget. The total amount required to be raised by assessments for any fiscal period less than a full fiscal year shall be the total amount required to be raised for the fiscal year determined as above and multiplied by a fraction, the numerator of which is the number of days in the fiscal period and the denominator of which is the number of days in that fiscal year. Any deficit, occurring or anticipated, shall be the subject of a special assessment.

Except as emergencies may require, the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association.

The total amount to be assessed shall be allocated among the condominium units on the basis of each owner's interest in the general common elements as set forth on Exhibit B.

7.2 Time for Payment. One-twelfth of each owner's annual assessment shall be due on the first day of the fiscal year and on the first day of each month thereafter. A monthly assessment installment shall be considered past due on the sixteenth day of the month for which it is due. A late charge of ten percent of the past due payment shall be charged to the owner. In the event a monthly assessment installment has not been received by the Association by the end of the month for which it is due, interest shall accrue on such amount from the first day of such month at the rate of 12 percent per annum.

7.3 Assessment Reserves. Each owner shall be required

to deposit and to maintain with the Association up to four times the amount of the estimated monthly common assessment, without interest, which sum shall be used by the Board of Directors as a reserve for paying such owner's monthly common assessment, for purchase of equipment and supplies and for working capital. Such advance payment shall not relieve an owner from making the regular monthly payments of the monthly common assessment as the same come due, nor from the penalties and interest for failure to make the regular monthly payments. /3

7.4 Owner's Personal 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. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit. The Board of Directors shall have the responsibility to take prompt action to collect any unpaid assessment which remains unpaid for more than 30 days from the due date for payment thereof. In the event of default in the payment of the assessment, the unit owner shall be obligated to pay all expenses of collection, including reasonable attorney's fees. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing the lien, nor shall such suit be or construed to be a waiver of the lien.

7.5 Association Lien for Nonpayment of Common Expenses.

(a) All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit shall constitute a lien on such unit superior to all other liens and encumbrances, except only for tax and special assessments liens on the condominium unit in favor of any assessing unit, and 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 encumbrances. To evidence such lien, the Board of Directors shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice of lien shall be signed by one of the Board of Directors or by one of the officers of the Association and shall be recorded in the office of the County Clerk and Recorder. Such lien shall attach and be effective from the due date of the assessment until all sums, with interest and other charges thereon, shall have been fully paid.

(b) Such lien may be enforced by the foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice of claim thereof. In such proceedings, the owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, and in the event of foreclosure proceedings, all additional costs, all expenses and reasonable attorney's fees. The owner of the condominium unit being foreclosed shall be required to pay to the Association the monthly common assessment for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver during the foreclosure. The Association shall have the power to bid in the condominium unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same.

(c) Any mortgagee holding a lien on a condominium unit may pay, but shall not be required to pay, any unpaid common assessments 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. Upon request of a mortgagee, the Association shall report to the mortgagee of a condominium unit any unpaid common assessment or other charges remaining unpaid for longer than thirty days after the same is due; provided, however, that a mortgagee shall have furnished to the Managing Agent or to the Board of Directors notice of such encumbrance. 14

(d) The recorded lien may be released by recording a Release of Lien to be signed by an officer or a Director of the Association.

7.6 Priorities of Association. The owner of a condominium unit may create a junior mortgage (junior to the lien, deed of trust or other encumbrances of the first mortgagee), lien or encumbrances on his condominium unit; provided, however, that any such junior mortgages, liens or encumbrances shall always be subordinate to the prior and paramount lien of the Association for common expenses and all of the terms, conditions, covenants, restrictions, uses, limitations and obligations under this Declaration, Association Articles of Incorporation and By Laws and provided, further, that such junior encumbrancer(s) shall release, for purposes of restoration of any improvements upon the encumbered condominium unit, all of his rights, title and interest in and to the proceeds under all insurance policies upon said premises by the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

7.7 Ascertainability of Unpaid Common Expenses.

(a) Upon ten days' written request for a Statement of Account by an owner or his agent, prospective mortgagee or prospective grantee of a condominium unit, the Association shall furnish a written statement of the amount of any unpaid common expenses, the amount for any advanced payments made, prepaid items such as insurance premiums and reserves therefor, deficiencies in reserve accounts, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request shall be complied with within ten days after receipt of such written request, all unpaid common expenses which become due prior to the date of such request shall be subordinate to the rights of the person requesting such statement. A service fee of not more than Fifty Dollars shall be paid for furnishing the Statement of Account.

(b) The provisions set forth in this section shall not apply to the initial sales and conveyances of the condominium units made by Declarant, and such sales shall be free from all common expenses to the date of conveyance made or to a date as agreed upon by Declarant and Declarant's grantee.

7.8 Omissions Do Not Constitute Waiver. The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay the same.

7.9 Accrued Assessments Following Foreclosure. Any first mortgagee who acquires title to a condominium unit by foreclosure or by a deed in lieu of foreclosure shall not be liable for the unpaid assessment for such unit which accrued prior to such mortgagee's acquisition of title.

ARTICLE VIII

Destruction, Damages or Obsolescence

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8.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or damage, for its repair and reconstruction or its obsolescence and to maintain, repair and improve the condominium units, buildings and general and limited common elements. Title to any condominium unit is declared and expressly made and subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the property upon its damage or destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers or agents, 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 improvements as used in this Article means restoring the improvement(s) to substantially the same condition in which they 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 for the purpose of repair, restoration, reconstruction or replacement unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

8.2 Restoration of Improvements.

8.2.1 Insurance Proceeds Sufficient. 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 shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

8.2.2 Insurance Proceeds Insufficient - Assessment.

(a) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty percent of the total replacement cost of all of the condominium units, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense and made pro-rata according to the replacement cost of each unit as established by the insurance company carrying the insurance on the buildings as provided in Article 6.3. Such assessment shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s) using all of the insurance proceeds for each 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

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and may be enforced and collected as is provided in Article VII. In addition thereto, the Association, 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 shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this section. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eight percent per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

1. For payment of taxes and special assessments liens in favor of any assessing entity and the customary expense of sale;
2. For payment of the balance of the lien of any first mortgage;
3. For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
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.

(b) If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if such damage is more than sixty percent of the total replacement cost of all of the condominium units in this project, not including land, and if the owners representing an aggregate ownership interest of fifty-one percent, or more, of the general common elements do not voluntarily, within one hundred days thereafter, make provisions for repair, replacement and reconstruction, which plan must have the approval of or consent of fifty-one percent, or more, of the first mortgagees of record, then the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire remaining premises shall be sold by the Association pursuant to the provisions of this section, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and the By Laws. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to the replacement cost of each unit as established by the insurance company carrying the insurance on the buildings as provided in Section 6.3. 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, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account the Association, 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 mortgagee against the condominium unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon the replacement cost of each unit as established by the insurance company carrying the insurance on the

buildings as provided in Section 6.3. The total funds of each account shall be used and disbursed, without contribution from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (a) 1 through 5 of Section 8.2.2. 17

(c) In the event of such damage or destruction under subparagraph (b) of this paragraph, and if a plan for repair, replacement and reconstruction is adopted as therein provided, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessments made in connection with such plan shall be a common expense and made pro rata according to the replacement cost of each unit as established by the insurance company carrying the insurance on the buildings as provided in Section 6.3 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 full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. 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 Article VII. In addition thereto, the Association, 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 shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owners shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (a) 1 through 5 of this Section 8.2.2.

8.2.3 Obsolescence.

(a) The owners representing an aggregate ownership interest of eighty percent, or more, of the general common elements in this project may agree that the general common elements are obsolete and adopt a plan for the renewal and reconstruction, which plan has the approval of eighty percent, or more, of the first mortgagees of record at the time of the adoption of such plans. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association 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 shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (a) 1 through 5 of Section 8.2.2.

(b) The owners representing an aggregate ownership

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interest of eighty-five percent, or more, of the general common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan or agreement must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire 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, the Articles of Incorporation and the By Laws. The sale proceeds shall be apportioned among the owners on the basis of the replacement cost of each unit as established by the insurance company carrying the insurance on the buildings as provided in Section 6.3 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, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (a) 1 through 5 of Section 8.2.2.

ARTICLE IX

Restrictive Covenants and Obligations

9.1 The property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. All buildings or structures erected upon the property shall be of new construction, and no building or structures shall be moved from other locations onto said premises, and no residential buildings other than buildings shown on the Map shall be erected or constructed on the property except by vote of the majority interest of the condominium unit owners. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used or permitted to be kept or stored on any portion of the premises at any time either temporarily or permanently.

9.2 No one-bedroom unit shall be occupied by more than two people, and no two-bedroom unit shall be occupied by more than three people. No person under the age of sixteen years shall occupy any unit except as a guest of the owner. A guest under the age of sixteen years shall not occupy a unit for more than thirty consecutive days and such occupancy may not occur more frequently than in six month intervals. In the event a child is born to an occupant, the occupant shall within two years from the date of the child's birth sell, lease or sub-lease, as the case may be, and vacate the premises.

9.3 Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, his agent, employees and contractors to maintain during the period of construction and sale of the condominium units, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale or rental of condominium units and interests, including, but without limitation, a business office, storage area, construction yards, signs, model units, sales office, construction office, parking areas and lighting.

9.4 No animals, livestock or poultry of any kind shall be raised, bred or kept on the property except that an owner or

owners of a unit may keep a dog, or a cat or another household pet. The right to keep a household pet shall be coupled with the responsibility to pay for any damage caused by the pet. Every owner of a pet shall maintain strict control over his pet and shall prohibit the pet from making loud, disturbing noises. The owner of a dog shall prohibit barking by his dog. No animal shall be permitted to roam the common elements. No animal shall be chained or caged in a common area. The owner shall keep the common areas clean of the animal's fecal deposits. 19

9.5 No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any condominium unit or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the property; provided, further, that the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings and improvements, if any, of the Declarant, its agent, contractors and assigns during the construction and sale and rental period and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

9.6 No nuisances shall be allowed on the condominium property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage be allowed to accumulate nor any fire hazard to exist. No unit owner shall permit any use of his unit or make use of the common elements which will increase the rate of insurance upon the condominium property.

9.7 No immoral, improper, offensive or unlawful use shall be permitted or made of the condominium property or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

9.8 Utilization of parking spaces not assigned to a unit, if any, shall be regulated by the Board of Directors in a manner which is fair and equitable to all owners. No parking space, whether assigned or not, shall be used for the storage of motor vehicles, boats, trailers, campers, house trailers or any other object, vehicle or equipment. No owner nor any person residing in a unit shall store any motor vehicle, boat, trailer, camper, house-trailer or other object on Estes Street adjacent to the units.

9.9 Rules and regulations may be adopted by the Board of Directors concerning and governing the use of the general and limited common elements; provided, however, that such rules and regulations shall be furnished to unit owners prior to the time that they become effective and that such rules and regulations shall be uniform and non-discriminatory.

9.10 Except for those improvements erected or installed by Declarant, no exterior additions, alterations or decorating to any buildings, nor changes in fences, hedges, walls, and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, heights, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the condominium project by the Association or by a representative designated by it.

ARTICLE X

Miscellaneous

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10.1 Duration of Declaration. Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of twenty-one years following the death of the survivor of Frank Plaut and William Gerber, Sr., and the now living children of said persons, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of the project and this Declaration are terminated or revoked as hereinafter provided.

10.2 Revocation or Amendment. Except as is otherwise provided, 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 in the project 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 eighty (80) percent or more, of the general common elements in the condominium project and all of the holders of recorded first mortgages or deeds of trust consent and agree to such amendment by instrument(s) duly recorded.

10.3 Registration of Mailing Address. Each owner shall register his mailing address with the Association, on such form as required by the Association, and notices or demands intended to be served upon an owner shall be sent by mail, postage prepaid, addressed in the name of the owner at such registered address.

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

10.4.1 Be deemed incorporated in each deed or other instrument by which any right, title or interest in the project or in any condominium unit is created, whether or not set forth or referred to in such instrument.

10.4.2 By virtue of acceptance of any right, title or interest in the project or in any condominium unit by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner, and, as a personal covenant, shall be binding on such owner and such owner's heirs, personal representatives, successors and assigns, and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other owner.

10.4.3 Be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the project and each condominium unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the project and each condominium unit.

10.4.4 Be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the project and each condominium unit in favor of the Association.

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10.5 Enforcement and Remedies. Each provision of this Declaration with respect to an owner or the condominium unit of such owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages, or, in the discretion of the Association for so long as any owner fails to comply with any such provisions, by exclusion of such owner and such owner's guests from use of any general common elements. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

10.6 Reservation to Association. Declarant reserves to the Association the right to establish utility easements and other easements consistent with the condominium use of the condominium project.

10.7 General.

10.7.1 This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each owner, and the heirs, personal representatives, successors and assigns of each of them.

10.7.2 Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

10.7.3 The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision of this Declaration.

10.7.4 Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

10.7.5 The provisions of this Declaration shall be in addition to and supplemental to the Condominium Ownership Act of the State of Colorado.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 11th day of April, 1978.

DECLARANT

ESTES SQUARE, a Joint Venture of
Frank Plaut and William Gerber, Sr.

By: Frank Plaut
Maxwell C. Breaugh in Fact
By: pursuant to instrument recorded
Frank Plaut Simultaneously herewith.

By: William Gerber, Sr.

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STATE OF COLORADO

County of Jefferson

} ss.

The foregoing instrument was acknowledged before me this 11th day of April, 1978, by Maxwell A. Snead, Attorney-in-Fact for Frank Plaut and by William Gerber, Sr., as joint venturers in Estes Square.

WITNESS my hand and official seal.

My commission expires: March 3, 1980



Juanita Kursesich
Notary Public

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EXHIBIT A

TO ESTES SQUARE CONDOMINIUM DECLARATION

Dated April 10, 1978

A parcel of land situated in a portion of Budlong's Resubdivision of Block 2, Wights Subdivision in Section 3, Township 4 South, Range 69 West of the 6th P.M., City of Lakewood, Jefferson County, State of Colorado, more specifically described as follows: Beginning at the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 3; thence N 00°02'32" W, Lakewood Assumed Datum, along the East line of said Northwest quarter of the Northeast quarter, a distance of 201.11 feet; thence S 89°18'23" W, a distance of 30.00 feet, to the Southeast corner of Lot 17 of said Budlong's Resubdivision, the True Point of Beginning; thence S 89°18'23" W; along the South line of Lots 17 and 32 of said Budlong's Resubdivision, a distance of 269.64 feet, to the Southwest corner of said Lot 32; thence continuing S 89°18'23" W a distance of 29.96 feet to the centerline of vacated Budlong Street; thence N 00°02'32" W, along said centerline, a distance of 176.63 feet; thence N 89°18'23" E, along the North line of Lot 38 of said Budlong's Resubdivision, a distance of 140.81 feet; thence N 00°02'32" W, a distance of 39.68 feet; thence N 89°18'23" E, a distance of 23.97 feet; thence S 00°02'32" E, a distance of 14.88 feet; thence N 89°18'23" E, along the North line of Lot 10 of said Budlong's Resubdivision, a distance of 134.82 feet, to the Northeast corner of said Lot 10, thence S 00°02'32" E along a line parallel and 30.00 feet East of the East line of said Northwest quarter of the Northeast quarter, a distance of 201.43 feet, to the True Point of Beginning. Containing 57,213.36 square feet, more or less.

EXHIBIT B

TO ESTES SQUARE CONDOMINIUM DECLARATION

Dated April 10, 1978

<u>Unit Number</u>	<u>Appurtenant Undivided Interest</u>
1A	.0440
2A	.0440
3A	.0440
4A	.0440
5A	.0258
6A	.0258
7B	.0440
8B	.0440
9B	.0440
10B	.0440
11B	.0258
12B	.0258
13C	.0440
14C	.0440
15C	.0440
16C	.0440
17C	.0258
18D	.0440
19D	.0440
20D	.0258
21F	.0312
22F	.0258
23F	.0258
24E	.0239
25E	.0239
26E	.0239
27E	.0239
28G	.0508
	1.0000