

Filed for record the 14th day of October A. D. 1976 at 12:20 o'clock P. M. Marian A. Smith RECORDER
 Exception No. 313375 By *Jane Pelton* DEPUTY

CONDOMINIUM DECLARATION

FOR

HITCHING POST CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, GARY A. GARCIA and CAROL A. GARCIA, (hereinafter referred to as "Declarant"), are the owners in joint tenancy of certain real property situate in the Town of Crested Butte, County of Gunnison, and State of Colorado, described as follows:

A parcel of land located in the Northeast 1/4 Section 3, Township 14 South, Range 86 West of the Sixth Principal Meridian which is Lots 1 through 6, Block 59, Town of Crested Butte, County of Gunnison, State of Colorado, said property being hereafter referred to as "the property", and

WHEREAS, Declarant is the owner of the improvements located on the property, being an apartment building containing six separate apartments and a separate detached building, used as the washing building, and

WHEREAS, Declarant is desirous of converting said apartment building and property to a condominium project, and

WHEREAS, Declarant desires to establish, by this Declaration, a plan for the individual ownership of that part of the property consisting of the area or spaces contained in each of the apartment units in the apartment building, and the co-ownership, as tenants in common, of all the remainder of the property and improvements thereon, which are hereinafter defined and referred to as the "common elements". Such plan is hereby declared to be for the benefit of the property and the owners thereof, their heirs, successors, administrators, grantees and assigns, and is for the purpose of designating the property as condominium property under the provisions of the

Condominium Ownership Act of the State of Colorado, Article 33, Title 38 of 1973 Colorado Revised Statutes, as amended.

NOW, THEREFORE, Declarant hereby makes the following declaration which shall govern the divisions, conveyances, covenants, restrictions, limitations, conditions and uses of the property hereby specifying that this Declaration shall constitute covenants to run with the land and shall be binding on Declarant, their successors and assigns, and all subsequent owners of all or any part of the property and improvements thereon, together with their grantees, successors, heirs, administrators and assigns.

I. DEFINITIONS

A. All applicable portions of definitions as contained in 1973 Colorado Revised Statutes, Chapter 38-33-103, shall apply to this Declaration and the property, except as particularly modified or changed by individual definitions hereinafter contained.

B. "Condominium Unit" - The air space which is contained within the perimeter walls, floors and roofs of each unit of a building as shown on the Condominium Plat of the property, to be recorded, together with all improvements and fixtures within said air space, except bearing walls, pillars and utilities passing through said condominium unit to serve adjacent condominium units, and except beams and portions of the building forming essential supports and essential structural parts, together with the Limited Common Element appurtenant thereto, and an individual one-sixth interest in and to the General Common Elements, all as set out in the Condominium Plat.

C. "Building" - A building containing condominium units.

D. "Condominium Interest" - The fee title to a condominium unit, together with all individual interests, fractional interest, building ownership and other rights appurtenant thereto.

E. "Condominium Plat" - A Plan by Merrick and Company showing at least the following: (1) boundary description of the property, (2) the locations of all buildings and other improvements thereon, (3) the site, floor and building elevations, and (4) density of site.

Said Condominium Plat may be recorded simultaneously herewith or subsequent thereto and shall also include all subsequent amendments to the plat as originally recorded, which amendments may provide for more or fewer units or different size units than those indicated on the first plat, or different location of structures than those shown on the first plat.

F. "Fractional Interest" - means the proportionate interest of each condominium unit owner's undivided interest in common elements to all such interests.

G. "Limited Common Elements" - means those common elements whose use is limited to reserved to the owner or owners of an individual condominium unit, or to fewer than all owners of condominium units.

H. "Owner" - means a person, persons, firm, corporation, partnership, association or other legal entity, or any combination thereof, who or which owns an interest in one or more condominium units.

I. "Building Ownership" - means the fractional interest which each condominium unit owner owns of the building in which such owner's condominium unit is located.

J. "Common Expenses" - means the expenses of administration, of repair and maintenance of common elements and buildings, including, but not limited to, removal of snow, mowing grass, caring for the grounds, sprinkler system, swimming pool, recreational buildings, roofs, walls and supports of building and carports, reserve for repair, maintenance,

taxes and other charges, including fire and other hazard insurance premiums, and a liability insurance policy in the face amount of not less than \$500,000.00, which policy, in addition to public liability, shall cover repair and construction work to all of the assets and property owned or to be maintained by the Association. Such common expenses shall be paid in amounts and at times determined reasonable and necessary by the Association for the best good and convenience of all condominium unit owners.

K. "Condominium Project" - means all of the land and improvements initially submitted by this Declaration and subsequently submitted as may be provided hereinafter.

L. "Association" - means a Colorado non-profit corporation bearing the name of this condominium project, formed for the purpose of managing, maintaining, repairing and administering the property and all buildings and improvements and common elements on a part of the property; of assessing, collecting and applying common expenses, for enforcing this declaration, for acting as attorney-in-fact or trustee for condominium unit owners as hereafter set forth, and generally for administering the property. Its only members shall be owners of condominium units. A person who, for any reason, ceases to be such owner shall cease to be such member, which membership provisions shall be included in the Associations' by-laws.

M. "Managing Agent" - means an individual, firm, partnership or corporation authorized to do business in the State of Colorado, employed by the Association, to administer and operate the property and to carry out such other duties as the Association may direct, in furtherance of its purposes. Wherever in this Declaration a duty is imposed upon, or a right

or privilege is reserved to, the Association, if such duty, right or privilege is delegated by the Association to the Managing Agent, the latter shall thereupon be deemed to have assumed such duty and shall be entitled to exercise such right or privilege.

III. CONVEYANCE OF CONDOMINIUM INTERESTS

Any deed, lease, mortgage, deed of trust or similar instrument, hereinafter referred to as deed, may legally describe a condominium unit as follows:

Unit No. _____, HITCHING POST CONDOMINIUMS, Town of Crested Butte, Gunnison County, Colorado, as set forth in that plat recorded in the office of the Clerk and Recorder of Gunnison County, Colorado on the 14th day of October, 1976, Reception No. 313374.

and every such description shall be deemed to include the entire condominium interest.

The initial deed may contain whatever reservations, exceptions and exclusions are deemed by Declarant to be for the best interests of all condominium unit owners and the Association. All such reservations, exceptions and exclusions shall be deemed for the ultimate benefit of the Association after Declarant shall have conveyed all its interest in "the property" to owners of condominium units.

Anything in deeds of conveyances, restrictions or this Declaration to the contrary or apparent contrary notwithstanding, the owners of condominium units shall be entitled to the use of air space over all common elements except limited common elements in common with all other such condominium unit owners, except such space specifically conveyed to another or which is being actually built on or utilized for purposes specifically reserved by deed; provided only that no owner of a condominium unit may build on or over any such common elements or limited

common elements or appropriate to his own use air space over common elements, all except as may properly be done through the Association.

IV. DUTIES OF ASSOCIATION

The Association (or Managing Agent) shall have the duty of determining by estimate or otherwise the amount of common expenses necessary to properly maintain and repair and administer the condominium property. At the time of the first conveyance of each condominium unit and from time to time thereafter, it shall notify the owner or owners of each condominium unit the amount of the estimated annual assessment and shall collect the fractional interest of one-twelfth (1/12) of the amount thereof from each owner or owners of a condominium unit each month, or a pro rata portion for a period beginning after the first day of a month. It shall establish and maintain a reserve of such funds for maintenance, repair, administration, payment of a manager if necessary, payment of insurance premiums, and other matters deemed by the Association (or Managing Agent) appropriate for reserves. It shall have the duty of applying such funds and to keep the condominium property well maintained and in a proper state of repair and cleanliness, and to keep all of the property properly insured as hereinafter provided.

Upon the initial conveyance of each condominium unit, the Association (or Managing Agent) shall give notice for separate tax assessment as 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 assessment and taxation.

The common expenses shall include the insurance premium, administration and management expenses, costs of maintaining all buildings and recreation areas, maintenance of

parking stalls and areas, maintenance and replacement of hot water heaters, furnaces and other utilities and equipment used in connection therewith. Heat, light and water and the cost of replacing, maintaining and repairing equipment for same shall be assessed by charging the common-element-ownership percentage of the cost therefor for each building to the owner of each condominium unit in such building. Such costs for sewer and water mains, electrical lines and other matters serving service units and common elements as contrasted with limited common elements shall be charged to each condominium unit owner on the basis of fractional interest. The amounts may be determined by estimate, and changed from time to time as actual bills or experience requires. Each condominium unit owner shall pay all repairs and utilities, except water and sewer applicable to his individual condominium unit, including hot water heater, ranges, etc., in the building in which his unit is located directly and not through the Association.

V. LIEN FOR NONPAYMENT OF COMMON EXPENSES

It shall be the duty of the owner of each condominium unit to pay his proportionate share of the expenses of administration, maintenance and repair of the common elements, taxes, insurance and fixed charges allocated or assessed to such unit and its corresponding condominium interest, and of any other expense set forth in Section IV above. Payment thereof shall be in such amounts and at such times as may be determined by the Association (or Managing Agent).

If any condominium unit owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof shall constitute a lien on the condominium interest of such owner as set forth in the deed of conveyance to

him, together with his interest in common elements, and upon the recording of notice thereof by the Association (or Managing Agent) in the office of the Clerk and Recorder of Gunnison County, such lien shall be constituted upon such unit owner's interest of condominium property prior to all other liens and encumbrances, recorded or unrecorded, except only (a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this state and other state or federal taxes which by law are a lien on the interest of such unit owner prior to pre-existing recorded encumbrances thereon, and (b) all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance.

The Association (or Managing Agent) shall send a notice, postage prepaid, to any such encumbrancer whose encumbrance was recorded prior to the time of recording the notice of lien provided for in this section, at the address shown in the recorded encumbrance; provided that if such encumbrancer has furnished the Association (or Managing Agent) with another address, then such other address shall be used, and said Association (or Managing Agent) shall not foreclose its said lien until at least thirty (30) days after the date of depositing such notice in the United States mails, postage prepaid, to the address of such encumbrancer.

In addition to the lien and foreclosure of same as herein provided, the Association (or Managing Agent) may, at its discretion, after the notice period provided in the preceding paragraph, cause water service to any unit to be terminated until such time as all arrearages have been paid.

Any encumbrancer holding a lien on a condominium unit may pay any common expenses payable with respect to such unit, and, if so provided in an encumbrance, may add the amount of such payment to the unpaid balance secured by his lien, and such added amount shall have the same priority and lien rights as the unpaid balance to which added.

The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other condominium unit owners, and may be foreclosed by an action brought in the name of the Association in a like manner as a mortgage of real property. In any such foreclosure the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorney fees (but not less than the amount recommended by the Bar Association of said county according to the then current published fee schedule for foreclosure proceedings through Court). The owner shall also be required to pay the Association all monthly assessments for the condominium unit during the period of foreclosure, and the Association shall be entitled to a Receiver to collect the same. The Association acting on behalf of the unit owners, shall have the power to bid in the interest so foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its rights to such lien as may be necessary or expedient to an insurance company which will continue to give total coverage in spite of nonpayment of such defaulting owner's portion of the premium.

The Association (or Managing Agent), and its officers and directors, shall not be liable or accountable in damages

for any action taken pursuant to the provisions of this Declaration.

VI. 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 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.

VII. JOINT LIABILITY OF TRANSFEROR AND TRANSFEREE

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; unless said liability is limited by the contents of a Certificate issued to the grantee under paragraph VIII below, or is avoided by the non-issuance of such Certificate within the ten-day period as set forth in paragraph VIII below. "Grantee" as used in this paragraph shall not include one who acquires title through foreclosure of a first Mortgage or a first deed of trust, or through a deed taken in lieu of such foreclosure.

VIII. CERTIFICATE OF ASSESSMENTS

Upon payment of a reasonable fee not to exceed Twenty-five (\$25.00) Dollars and upon the written request of any owner, mortgagee, prospective grantee or prospective mortgagee, of a

condominium unit, the Association -- by its financial officer, (or the Managing Agent) shall issue a written Certificate setting forth the amount of unpaid common expense, if any, with respect to the subject unit; the amount of the current monthly assessment and the date upon which such assessment becomes due; and credit for advanced payments or for prepaid items (including, but not limited to, insurance premiums). Such Certificate shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a Certificate of Assessments be complied with within ten (10) days of the receipt of the request, then (a) in the case of a request by a mortgagee or prospective mortgagee, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of said mortgagee or prospective mortgagee, or (b) in the case of a request by a prospective grantee, he shall not be liable for, nor shall the unit conveyed by subject to a lien for, any unpaid assessments or common expenses which became due prior to the date of making such request. No failure to comply with such request, if made by the owner, shall relieve him from personal liability for, or the subject unit from the lien for, any unpaid assessments or common expenses. The provisions contained in this paragraph shall not apply upon the initial transfer of the condominium units by Declarant.

IX. MORTGAGING A CONDOMINIUM UNIT

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 and by the By-laws; and (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvement upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association.

X. FORECLOSURE, DEEDS, ETC.

" In the event any person shall acquire or be entitled to the issuance of a tax deed, public trustee's deed, sheriff's deed, commissioner's deed, etc., the interest so acquired shall be subject to all the provisions of this Declaration and to the terms, provisions, covenants, conditions and limitations contained in the Declaration, the Condominium Map, the by-laws of the Association or any restrictions or exceptions affecting such interest then in force.

XI. INSURANCE

The Association, through its Board of Directors (or the Managing Agent) shall have the authority to and shall obtain insurance for the condominium property on all buildings, common areas, etc., for liability as set forth in paragraph I above and against loss or damage by fire and such other hazards as are generally covered in the area under standard extended coverage provisions for at least the full insurable replacement costs of the condominium buildings, common elements and units,

and shall include coverage against vandalism, etc. From time to time, and not less often than once every eighteen months, the Association (or Managing Agent) shall cause to be made -- by a reputable builder or construction contractor -- an estimate of the replacement costs of the condominium buildings, common elements, and units, and shall thereupon cause the insurance coverage to be raised or lowered accordingly. The insurance shall be carried with a domestic company having the highest rating, and shall be in blanket policy form naming the Association 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 mortgagee 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 to each first mortgagee. The Association (or Managing Agent) 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.

A condominium unit owner may obtain whatever additional insurance he desires; it shall, however, be the individual responsibility of each owner to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss, and payment for the premiums therefor and renewal thereof shall be the sole responsibility of such owner and not of the Association.

XII. ASSOCIATION 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 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 the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver to itself or a third person 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 paragraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each condominium unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association as set forth in Paragraph XIII below.

Such power of attorney includes a power to subject a unit owner's condominium interest and/or percentage ownership to whatever rights are necessary (including entry of a unit in an emergency) to permit proper maintenance, repair and improvement to each and all condominium buildings and common areas by the Association, or by the Managing Agent.

XIII. DISPOSITION OF DESTROYED OR
OBSOLETE UNIT

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 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 sixty (60%) per cent 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, 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 made pro-rata according to each owner's percentage interest in the general common elements and 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 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 V. 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 paragraph. 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 (8%) 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.

C. If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if such damage is more than sixty (60%) percent of all of the condominium units (the whole property), not including land, and if the owners representing an aggregate ownership interest of fifty-one (51%) percent, 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 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 paragraph, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each owner's percentage interest in the general common elements, 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, 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 mortgage against the condominium unit represented by such separate account. 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 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, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph B (1) and (5) of this paragraph.

D. If the owners representing an aggregate ownership interest of fifty-one (51%) percent, 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 shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condo-

minium unit and may be enforced and collected as is provided in paragraph V. 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 owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten (10%) 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 B (1) through (5) of this paragraph.

E. The owners representing an aggregate ownership interest of eighty (80%) percent, or more, of the general common elements may agree that the general common elements 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, and the expense of renewal and reconstruction shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that such unit shall be purchased by the Association for the fair market value thereof. The Association shall then have thirty days (thereafter) within which

to cancel such plan. If such plan is not cancelled, the condominium unit of the requesting owner shall be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty 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 "commencement date" from which all periods of time mentioned herein shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with him another appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty 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, as attorney-

in-fact, shall disburse such proceeds for the same purposes and in the same order as is provided in subparagraph B (1) through (5) of this paragraph, except as modified herein.

F. The owners representing an aggregate ownership interest of eighty-five (85%) 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 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 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, 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 B (1) through (5) of this paragraph.

XIV. EASEMENT FOR MINOR ENCROACHMENTS

The owners of the respective condominium units agree that if any portion of the common areas and facilities encroaches upon the condominium units, or if any portion of a unit en-

croaches 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. In the event a structure is partially or totally destroyed, and then rebuilt, the owners of condominium units therein agree that minor encroachment of parts of the common areas and facilities due to construction shall be permitted and that valid easement for said encroachment and the maintenance thereof shall exist. None of such encroachments or easements shall be considered or determined to be encumbrances either on the general common elements or on the units.

There is hereby created a blanket easement upon, across, over and under the above-described premises for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for an electrical and/or telephone company to erect and maintain necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said condominium units. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said premises except as initially programmed and approved by Declarant or thereafter approved by said Declarant or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

An easement is also reserved in, on and over each condominium unit to permit the Association or its designees to

effect any desired or necessary maintenance or repairs to a building.

XV. USE AND OCCUPANCY RESTRICTIONS

A. The property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

B. No animals, livestock or poultry of any kind shall be raised, bred or kept on the property or in any unit, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

C. No advertising signs (except one of not more than five square feet "For Rent" or "For Sale" sign per parcel), 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 of 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.

D. All clotheslines, equipment, garbage cans, service yards, wood piles, or storage piles shall be confined to areas designated by the Association (or Managing Agent). All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon.

E. No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said premises, except such as are approved by the Association's Board of Directors or their designated representative. The owners of condominium units are hereby prohibited and restricted from using any land or air space outside the exterior building lines, except as may be allowed by the Association's Board of Directors or as provided in this declaration. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of condominium units and is necessary for the protection of said owners.

F. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements and all exteriors and roofs of the condominium units, including, but not limited to, recreation and parking areas and walks, shall be taken by the Association.

G. The Association, or its duly delegated representative, shall maintain and otherwise manage all property up to the exterior building lines and including, but not limited to, the landscaping, parking areas, streets and recreational facilities, roofs, common elements and exteriors of the buildings located upon the above-described properties, except windows of condominium units, and shall maintain and otherwise manage and be responsible for the rubbish removal of all areas within the above-described property.

H. No exterior additions, or alterations to any building or changes in fences, hedges, walls and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, mater-

ials, location and approximate cost shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by an architectural committee composed of the Board of Directors of the Association, or by a representative designated by the Board of Directors.

I. Additional recreational facilities and other common facilities may be constructed from time to time by the Association, provided that it shall first be authorized to do so by the written consent of at least three-fourths of the owners of condominium units in the project.

J. In the event any common element or building (exclusive of any party wall) is damaged or destroyed through the negligent or culpable act of an owner or any of his guests, agents or members of his family, such owner does hereby irrevocably authorize the Association its attorney-in-fact as set forth in Paragraph XII above, to repair said damaged element or building, and the Association shall so repair said damaged element or building. The owner shall then repay the Association in the amount actually expended for said repairs, together with all other expenses reasonably and necessarily incurred by the Association in connection therewith. Each condominium unit owner further agrees that these charges for repairs, if not paid within ten (10) days after the completion of the work, shall become a lien upon said owner's condominium interest as set forth in paragraph V above, and shall continue to be such lien until fully paid.

K. An owner shall maintain and keep in repair the interior of his own apartment, including the fixtures thereof. All fixtures and equipment installed within a condominium unit commencing at a point where the utility lines, pipes, wires,

conduits or systems (which for brevity are hereafter referred to as "utilities") enter the apartment unit shall be maintained and kept in repair by the owner thereof.

L. An owner shall not do any act or any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament.

XVI. PARTITION PROHIBITED

No condominium unit owner shall bring any action for partition or division of his undivided interest in the land underlying the condominium unit or property or in any common element or condominium building in which he owns an undivided interest. Any covenant or agreement to the contrary shall be null and void.

XVII. RECORDS OF RECEIPTS AND EXPENDITURES

The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other common expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the condominium unit owners and others with an interest such as encumbrancers or prospective lenders at convenient hours of week days.

XVIII. REVOCATION OF OR AMENDMENT TO DECLARATION

This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of seventy-five (75%) percent, 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 revocation or amendment

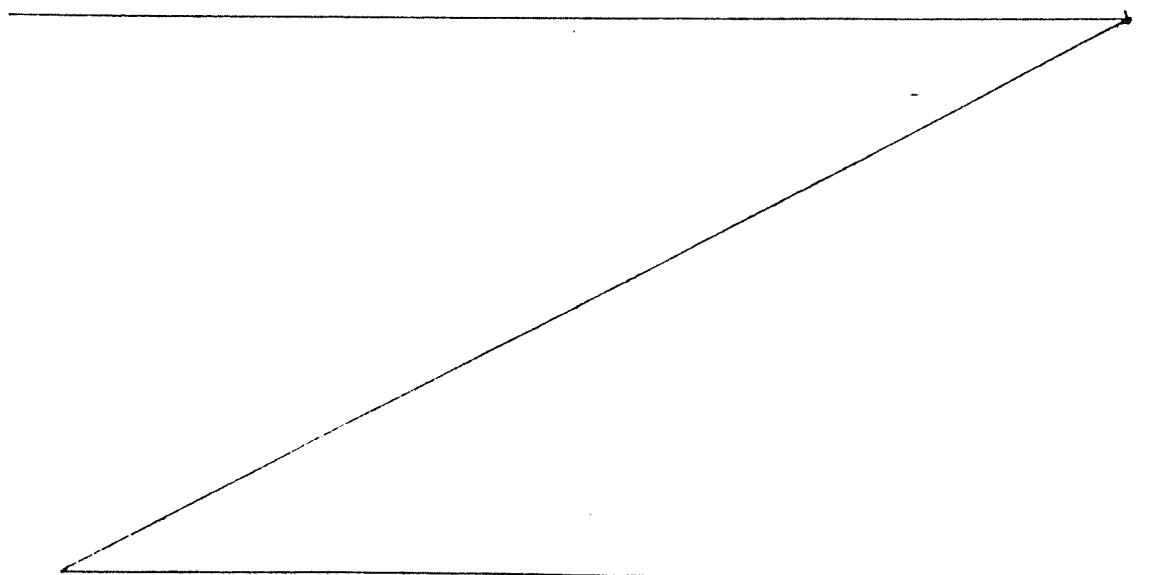
by instrument(s) duly recorded; provided, however, that the percentage of the undivided interest in the general common elements appurtenant to each apartment unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded.

XIX. SEVERABILITY

If any provisions of this Declaration or any section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

XX. LANGUAGE VARIATION

The use of pronouns or of singular or plural as used herein shall be deemed to be changed as necessary to conform to actual facts.



IN WITNESS WHEREOF, the Declarant has executed the foregoing Condominium Declaration this 31st day of August, 1976.

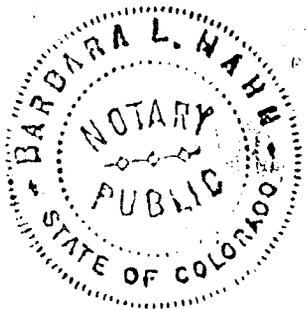
Gary A. Garcia
GARY A. GARCIA

Carol A. Garcia
CAROL A. GARCIA

STATE OF COLORADO)
) SS.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 31st day of August, 1976, by GARY A. GARCIA and CAROL A. GARCIA. Witness my hand and official seal.

My commission expires: My Commission expires July 28, 1980



Barbara L. Hahn
NOTARY PUBLIC