

CONDOMINIUM DECLARATION

FOR

SHERWOOD CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, HOWARD E. FERGUSON hereinafter called "Declarant", is the owner of the real property situate in the County of El Paso, State of Colorado, which property is described on the attached Exhibit "A", which by this reference is made a part hereof; and

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

WHEREAS, the initial development will consist of thirteen (13) buildings, which have been constructed, which buildings and other improvements will consist of seventy-four (74) separately designated condominium units; and

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

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

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

(a) 'Unit' means an individual air space unit which is contained within the perimeter walls, floors, ceilings, windows, and doors of such unit in the building as shown on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained, but not including any of the structural components of the building, if any, in such unit.

(b) 'Condominium unit' means the fee simple interest and title in and to a unit, together with the undivided interest in the general and limited common elements thereto.

(c) 'Owner' means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more condominium units.

(d) 'General Common Elements' means the land more particularly described in Exhibit "A", on and over which the condominium buildings will be located; the foundations, columns, girders, beams, supports, walls, roof, flues, standpipes, yard, recreation areas, Laundry Room, Boiler Room, Cabana, drives and walkways, the installation of services for public utilities including, but not limited to electricity, gas, water (including all pipes, ducts, flues, wires, cables and conduits used in connection therewith, whether located in common areas or in apartment units); and in general all apparatus and installations existing for common use that are located within the condominium buildings; and all other parts of the condominium buildings and land necessary

or convenient to its existence, maintenance and safety, or normally in common use, all of which shall be owned as tenants in common, by the owners of the separate units, each owner of a unit having an undivided percentage or fractional interest in such general common elements as is provided hereinafter.

(e) '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, as shown on the Map.

(f) 'Condominium project' means all of the land and improvements initially submitted by this Declaration.

(g) 'Common expenses' means and includes expenses for maintenance, repair, operation, management and administration; expenses declared common expenses by the provisions of this Declaration and the By-Laws of the Condominium Association, and all sums lawfully assessed against the general common elements by the Board of Managers of the Association.

(h) 'Association of unit owners' or 'Association' means the Sherwood Condominium Association, Inc., a Corporation not for profit, its successors and assigns, the Certificate of Incorporation, and By-Laws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.

(i) 'Building' means a single building containing units as shown on the Map.

(j) 'Maps' means and includes the engineering survey of the land locating thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements and land.

2. Condominium Map. The Map shall be filed for record prior to the conveyance of any of the units to purchasers. The Map or any part or section thereof depicting units shall not be filed for record until the building in which the units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically. Each such 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 of a building located within a unit; and, the unit designations and the building numbers. The Map shall contain the certificate of a registered professional engineer or licensed architect, or both, certifying that the map substantially depicts the location and the horizontal and vertical measurements of the buildings, the units, the unit designations, the dimensions of the units, the elevations of the floors and ceilings as constructed, each building number or symbol and that such Map was prepared subsequent to substantial completion of the improvements. Each supplemental and/or any amendment shall set forth a like certificate when appropriate. In interpreting the Map, the existing physical boundaries of each separate unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Map, from time to time, to conform the same according to the actual location of any of the constructed improvements and to establish, vacate and relocate easements, access road easements and on-site parking areas.

3. Division of Property into Condominium Units. The real property is hereby divided into the following fee simple estates, each such estate consisting of the following:

The separately designated units and the undivided interest in and to the general common elements appurtenant to each unit as is set forth in the attached Exhibit "B", which by this reference is made a part hereof. Each such unit shall be identified on the Map by number and building symbol as shown on Exhibit "B".

4. 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. The stairway leading to a unit located on the second floor and the balcony or balconies which are accessible from, associated with and which adjoin a unit shall, without further reference thereto, be used in connection with such unit or units to the exclusion of the use thereof by the other owners of the general common elements, except by invitation. All of the owners of the condominium units in this condominium project shall have a non-exclusive right in common with all of the other owners to use of sidewalks, pathways, roads and streets located within the entire condominium project. No reference thereto, whether such limited common elements are exclusive or non-exclusive, need be made in any deed, instrument or conveyance, or other instrument, and reference is made to the provisions of Paragraph 7 of this Declaration.

5. Automobile Parking. Each owner shall have a co-equal right to use the parking areas; provided, however, that the Association, through its Board of Managers, shall maintain control thereof and shall have the right to assign and to reassign to each owner a specific parking space.

6. 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.

7. Description of Condominium Unit. Every contract for the sale of a condominium unit written prior to the filing for record of the Map may legally describe a condominium unit by its identifying unit number, the building number, followed by the words "Sherwood Condominium", with further reference to the Map thereof and the Declaration to be filed for record. Subsequent to the filing of the Map and the recording of the Declaration, every deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit number, the building number, followed by the words "Sherwood Condominiums", with further reference to the Map thereof filed for record and the recorded Declaration. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the unit, but also the general common elements and the limited common elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress to an owner's unit and use of all of the general common elements. The initial deeds conveying each condominium unit may contain reservations, exceptions and exclusions which the Declarant deems to be consistent with and in the best interests of all condominium unit owners and the Association.

8. Separate Assessment and Taxation - Notice to Assessor. Declarant shall give written notice to the Assessor of the County of El Paso, State of Colorado, of the creation of condominium ownership 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 assessment and taxation.

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

10. Non-Partitionability of General Common Elements. The general common elements shall be owned in common by all of the owners of the units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

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

12. Use and Occupancy. All units shall be used and occupied by the owner, his family and their guests, and his tenants and their guests.

Declarant and his employees, representatives, agent and contractors may maintain a business and sales office, construction facilities and yards, model units and other facilities necessary or required during the sales periods.

13. Easements for Encroachments. If any portion of the general common elements encroaches upon a unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a unit encroaches upon the general common elements, or upon an adjoining unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or on the units.

14. 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 or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit or any other unit owner not expressly consenting to or requesting the same, or against the general common elements. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request. The provisions herein contained are subject to the rights of the Managing Agent or Board of Managers of the Association as is set forth in Paragraph 17.

15. Administration and Management. The administration and management of this condominium property shall be governed by the By-Laws of the Association. An owner of a condominium unit, upon becoming an owner, shall be a member of the Association and shall remain a member for the period of his ownership. The Association shall be initially governed by a Board of Managers as is provided in the By-Laws of the Association. The Association may delegate, by written agreement, any of its duties, powers and functions to any person or firm to act as Managing Agent at an agreed compensation.

16. Certificate of Identity. There shall be recorded, from time to time, a Certificate of Identity and the addresses of the persons then comprising the management body (Managers and Officers) together with the identity and address of the Managing Agent.

Such Certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith, regardless of time elapsed since the date thereof. The first such Certificate shall be recorded on or before July 1, 1973.

17. Reservation for Access - Maintenance, Repair and Emergencies. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each unit from time to time during reasonable hours, as may be necessary for the maintenance, repair or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general common elements or to another unit or units. Damage to the interior or any part of a unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of emergency repairs within another unit at the instance of the Association shall be a common expense of all of the owners; provided, however, that if such damage is the result of the misuse or negligence of a unit owner, then such unit owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored to substantially the same condition of such improvements prior to damage. All maintenance, repairs and replacements as to the general common elements, whether located inside or outside of units (unless necessitated by the negligence or misuse 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.

18. Owners' Maintenance Responsibility of Unit, Balconies and Parking Areas. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the unit, including unit doors and windows. The owner shall not be deemed to own lines, pipes, wires, conduits or systems (which for brevity are herein and hereafter referred to as utilities) running through his unit which serve one or more other units, except as a tenant in common with the other owners. Such utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Board of Managers. Such right to repair, alter and remodel is coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. An owner shall maintain and keep in repair the interior of his own unit, including the 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 repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. An owner shall also keep the balcony area and stairways appurtenant to his unit in a clear and sanitary condition and free and clear of snow, ice and any accumulation of water. All other maintenance or repairs to any limited common elements, except as caused or permitted by the owner's negligence, misuse, or neglect thereof, shall be a common expense of all of the owners.

19. Compliance with Provisions of Declaration, By-Laws of the Association. Each owner shall comply strictly with the provisions of this Declaration, the Certificate of Incorporation and By-Laws of the Association, and the decisions and resolutions of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure 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 Managing Agent or Board of Managers in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

20. Revocation or Amendment to Declaration. This Declaration shall not be revoked unless all of the owners and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all of the condominium units unanimously consent and agree to such revocation by instrument(s) duly recorded. This Declaration shall not be amended unless the owners representing an aggregate ownership interest of sixty percent (60%), 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 consent and agree to such amendment by instrument(s) duly recorded; provided, however, that the percentage of the undivided interest in the general common elements appurtenant to each unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded, and provided, further, that revocation of this Declaration shall always require the consent of all of the owners.

21. Additions, Alterations and Improvement of General and Limited Common Elements. There shall be no additions, alterations or improvements of or to the general and limited common elements requiring an expenditure in excess of Five Hundred Dollars (\$500.00) in any one calendar year without prior approval of a majority of the owners. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any general common element or common property.

22. Assessment for Common Expenses. All owners shall be obligated to pay the assessments, either estimated or actual, imposed by the Board of Managers of the Association to meet the common expenses. The assessments shall be made according to each owner's percentage or fractional interest in and to that part of the general common elements. Except as is provided in Paragraph 17, the 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. Assessments for the estimated common expenses shall be due monthly, in advance, on the first day of each month. The Managing Agent or Board of Managers shall prepare and deliver or mail to each owner a monthly statement for the estimated or actual common expenses.

In the event the ownership of a condominium unit commences on a day other than the first day of the month, the assessment for that month shall be prorated.

The assessments made for common expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent, or if there is no Managing Agent, then the Board of Managers of the Association, shall, from time to time, determine is to be paid by all of the condominium unit owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations and improvements of and to the general common elements, and gas, electricity, water and water charges for all units which sum may include, but shall not be limited to, expenses of management; taxes and special assessments until separately assessed; premiums for fire insurance with extended coverage and vandalism and malicious mischief with endorsement attached issued in the amount of the maximum replacement value of all of the condominium units (including all fixtures; interior walls and partitions; decorated and finished surfaces of perimeter walls, floors and ceilings; doors, windows and other elements or materials comprising a part of the units); casualty and public liability and other insurance premiums; landscaping and care of grounds, common lighting and heating; repairs and renovations; trash collections, wages, water and sewer charges; legal and accounting fees; management and rental fees; expenses and liabilities incurred by the Managing Agent and Board of Managers on behalf of the unit owners under or by reason of this Declaration

and the By-Laws of the Association; for any deficit remaining from a previous period; the creation of a reasonable contingency, reserves, working capital, and sinking fund, as well as other costs and expenses relating to the general common elements. The omission or failure of the Board of Managers to fix the assessment for any period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay the same.

23. Insurance.

(a) The Managing Agent or the Board of Managers of the Association shall obtain and maintain at all times, insurance of the type and kind provided herein above and providing for such other risks, of a similar or dissimilar nature, as are or shall hereafter be customary for other similar condominium buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form, naming the Association 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, building designation), and which policy or policies shall provide a standard, non-contributory mortgagee clause in favor of each first mortgagee. It shall also provide that the policy cannot be cancelled, either by the insured or the insurance company, until ten (10) days prior written notice is first given to each owner and each first mortgagee. The Managing Agent or the Board of Managers shall also obtain and maintain, to the extent obtainable, public liability insurance in such limits as may, from time to time, be determined, covering each unit owner, each member of the Board of Managers, the Managing Agent, and the resident manager. Such public liability coverage shall also cover cross liability claims of one insured against another and shall contain waivers of subrogation.

(b) Determination of maximum replacement value of all condominium units and improvements owned by the Association (for insurance purposes) shall be made annually by one or more written appraisals to be furnished by a person knowledgeable of replacement cost. Each owner may obtain additional insurance, at his own expense, for his own benefit, provided that all such policies shall contain waivers of subrogation, and provided, further, that the liability of the carriers issuing insurance shall not be affected or diminished by reason of any such insurance carried by any unit owner. In no event shall the insurance policy contain a co-insurance clause for less than ninety percent (90%) of full replacement cost.

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

24. 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. Both the Board of Managers and Managing Agent shall have the responsibility to take prompt action to collect any unpaid assessment which remains unpaid more than fifteen (15) 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 interest at the rate of twelve percent (12%) per annum on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees, incurred, together with such late charges as provided by the By-Laws of the Association. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

25. Assessment Lien. 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 assessment liens on the 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 encumbrance. To evidence such lien, the Board of Managers or the Managing Agent shall prepare a written notice of lien assessment, setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice shall be signed by one of the Board of Managers or by one of the officers of the Association or by the Managing Agent, and shall be recorded in the office of the Clerk and Recorder of El Paso County, Colorado. Such lien for the common expenses shall attach from the date of failure of payment of the assessment. 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 subsequent to the recording of a notice or claim thereof. In any 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, the additional costs - all expenses and reasonable attorney's fees incurred, but not less than the amount recommended by the El Paso Bar Association according to the then current published and recommended fee schedule for foreclosure proceedings (for foreclosure proceedings through Court). The owner of the condominium unit being foreclosed shall be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on 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. Any encumbrancer holding a lien on a condominium unit may pay, but shall not be required to pay, any unpaid common expenses payable with respect to such unit, and upon such payment, such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance. Upon request of a mortgagee, the Association shall report to the mortgagee of a condominium unit any unpaid assessments remaining unpaid for longer than twenty-five (25) days after the same are due; provided, however, that a mortgagee shall have furnished to the Managing Agent or to the Board of Managers notice of such encumbrance.

26. Liability for Common Expense Upon Transfer of Condominium Unit Is Joint. Upon payment to the Managing Agent, or if there is no Managing Agent, then to the Association, of a reasonable fee, not to exceed Twenty-Five Dollars (\$25.00), and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium unit, the Association, by its Managing Agent, or if there is no Managing Agent, then by the financial officer of the Association, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for any advanced payments of common assessments, for prepaid items, such as insurance premiums, but not including accumulated amount for reserves or sinking funds, if any, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the rights of the person requesting such statement. The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee, not to exceed Twenty-Five Dollars (\$25.00), as



is hereinabove provided, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent, or if there is no Managing Agent, then from the Association, setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessment, the date that such assessment becomes due, and credits for any advanced payments of common assessments, prepaid items, such as insurance premiums, which statement shall be conclusive upon the Association. Unless such request for such a statement shall be complied with within ten (10) days of such request, then such requesting grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for any unpaid assessments against the subject unit. The provisions set forth in this paragraph shall not apply to the initial sale 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 agreed upon by Declarant and Declarant's grantee.

28. 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, repair or obsolescence.

Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed 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 Sherwood Condominium Association, a Colorado Corporation, not for profit, 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 hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary, shall have full and complete authorization, power and right to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements, unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

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

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty percent (60%) 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 (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 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 25. In addition thereto, the Association, as attorney-in-fact, shall have the absolute power and right 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 the paragraph. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest 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 assessment liens in favor of any assessing entity and 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 percent (60%) of all of the condominium units (the whole property), not including land, and if the owners representing an aggregate ownership interest of fifty-one percent (51%), 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. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed without contribution from one account to another, by the Association, 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.

If the owners representing an aggregate ownership interest of fifty-one percent (51%), 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 owners and a lien on his condominium unit, and may be enforced and collected as is provided in Paragraph 25. 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 six percent (6%) 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 Paragraph (b) (1) through (5) of this paragraph.

(d) The owners representing an aggregate ownership interest of eighty percent (80%), 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 (30) 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 (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. 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 (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall

be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, 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.

(e) The owners representing an aggregate ownership interest in eighty-five percent (85%), or more, of the general common elements may agree that the condominium units are obsolete and that the same should be sold. 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.

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

30. Registration of Mailing Address. Each owner shall register his mailing address with 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 mailing address.

31. Period of Condominium Ownership. The separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner and as is provided in Paragraph 20 of this Declaration or until terminated in the manner and as is provided in subparagraphs (c) or (e) of Paragraph 28 of this Declaration.

32. 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 written notice thereof to the Board of Managers or Managing Agent, together with an executed copy of such offer. The Board of Managers or Managing Agent shall then notify the owners of such offer by giving written notice thereof.

One or more of the owners shall have the right to purchase or lease the condominium unit upon the same terms and conditions as set forth in the offer. The first such owner giving notice to the Board of Managers or Managing Agent shall have the first right to purchase or lease; provided, however, that such written notice of such election to purchase or lease and a matching down payment or deposit is given to the selling or leasing owner on or before ten (10) 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 other owners 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 ninety (90) days, but any renewal or extension thereof which would extend the total tenancy beyond ninety (90) days 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 such owner or any successor 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 the period of the life of Howard E. Ferguson, the incorporator of the Association, plus twenty-one (21) years.

### 33. Exempt Transfers.

(a) In the event of any default on the part of any owners under any first mortgage which entitles 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 such foreclosure, shall be made free and clear of the provisions of Paragraph 32, 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 unit free and clear of the provisions of Paragraph 32, but is 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 Paragraph 32; 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.

(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 merger or consolidation; provided, however, that at least fifty percent (50%) 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 Managing Agent or Board of Managers that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Paragraph 32.

(d) Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium unit, the Managing Agent or Board of Managers of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(1) With respect to a proposed lease or sale under Paragraph 32, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;

(2) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from each first mortgagee or its nominee, pursuant to Paragraph 32(a), that the deeds were, in fact, given in lieu of foreclosure and were not subject to the provisions of Paragraph 32.

(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 Paragraph 32; such a certificate shall be conclusive evidence of the facts contained therein.

34. General Reservations. Declarant, for itself, its successors, assigns and lessees, reserves the following:

(a) The right to establish easements and rights of way consistent with the condominium ownership of the condominium project and for the best interests of the condominium unit owners and the Association, in order to serve the entire condominium project.

(b) Notwithstanding any other provision expressly or impliedly to the contrary contained in this Declaration, Declarant reserves the right to exercise the rights, duties and functions of the Association Board of Managers or Managing Agent, or both, until 120 days after the last sale of all of the Condominium units, including the exclusive right and powers to delegate to others the duties of a resident manager or managing agent, or both. The compensation or fee to be paid therefor shall be reasonable, and shall be a part of the common expenses. Upon the sale of all of the Condominium Units, or at the option of Declarant, at an earlier date, Declarant shall give written notice thereof to the condominium unit owners at which time the first meeting of the Association members shall be called.

35. Restrictive Covenants.

(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 buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings other than buildings shown on the Map shall be built on the property where the builder theretofore programmed and constructed a building.

No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used or permit to be kept or stored on any portion of the premises at any time temporarily or permanently.

(b) No animals, livestock or poultry of any kind shall be bred or kept on the property, except that dogs, cats or other household pets may be kept, subject to the rules and regulations from time to time adopted and amended by the Association.

(c) No advertising signs (except one of not more than one square foot "For Rent" or "For Sale" sign per unit), 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, however, the foregoing covenants shall not apply to the business activities, signs and billboards for the sale of the improvements, if any, of the Declarant, its agents, contractors and assigns during the sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

(d) All clotheslines, equipment, garbage cans, service yards, wood piles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring units and streets. All rubbish, trash or garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

(e) Except in individual yard and balcony areas, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association.

(f) No exterior additions, alterations or decorating to any buildings, nor changes in fences, hedges, walls, gates and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, 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 property by the Association, or by a representative designed by it.

### 36. General.

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

(b) The provisions of this Declaration shall be in addition to and supplemental to the Condominium Ownership Act of the State of Colorado and to all other provisions of law.

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

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 1973.

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Howard E. Ferguson

EXHIBIT A

A tract of land that is a parcel of Lot 15, in Block 10, Subdivision Block 10, Smartt's Subdivision No. 7, in the City of Colorado Springs, Colorado; whose location and boundaries are more particularly described as follows: Beginning at the Southeast corner of said Lot 15; thence Westerly on the South line of said Lot 15, a distance of 325.00 feet; thence angle right 90°00' Northerly a distance of 424.73 feet to a point on the Southeasterly boundary of Lot 9, of said Blcok 10; thence angle right 57° 52' 01" Northeasterly on the boundary of Lots 9, 10, 11, 12 and 13, a distance of 393.16 feet to the Northeasterly corner of said Lot 15; thence angle right 122° 50' 59" Southerly on said Easterly boundary of said Lot 15, a distance of 633.90 feet, more or less, to the point of beginning, El Paso County, Colorado.