

23

58301

BOOK 1957 PG 640

CONDOMINIUM DECLARATION
OF
FOUNTAIN CONDOMINIUM

OCT 7 12 04 PM '74
WILLIAM SONOL
COUNTY RECORDER
ADAMS COUNTY, COLO.

A 0 5 8 3 0 1

KNOW ALL MEN BY THESE PRESENTS

THAT, WHEREAS, REGENE JEGIER NACHEFF, of the City and County of Denver, and State of Colorado, hereinafter referred to as "Declarant", is the owner of the real property situated in the City of Brighton, County of Adams, and State of Colorado, more particularly described as follows:

The West 256 feet of Lot 4, Block 3,
BROMLEY HEIGHTS THIRD FILING,

(hereinafter referred to as the "Real Property"); and

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

WHEREAS, Declarant desires to establish by this Declaration a plan for the ownership in fee simple of real property estates consisting of the area or space contained in each of the apartment units in the building improvement and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining real property which is hereinafter defined and referred to as the General Common Elements;

NOW, THEREFORE, Declarant does hereby publish and declare that the Real Property, Buildings and Improvements constructed and located thereon, are hereby submitted and dedicated to condominium use and ownership as set forth herein and 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, her successors and assigns and any person acquiring or owning an interest in the Real Property and Improvements, their grantees, successors, heirs, executors, administrators, devisees, or assigns.

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

(a) Real Property means the real property described above, exclusive of the Building or Improvements now or hereafter constructed thereon.

(b) Condominium Complex or Project means the Real Property, the Improvements, and the Units.

(c) Building means the building containing the Units and which comprises a part of the Condominium Complex.

(d) Improvements means the Building, the General Common Elements and the Limited Common Elements.

(e) Map or Condominium Map means and includes the survey of the Real Property depicting thereon the

Condominium Complex, the floor and elevation plans of the Units and any other drawing or diagrammatic plan depicting a part or all of the Building, Improvements and Condominium Units.

(f) Unit means one individual air space Unit consisting of airspace or airspaces which are contained within the windows, doors, and unfinished perimeter walls, floors, and ceilings of each Unit within 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, within a Unit.

(g) Condominium Unit means the fee simple interest and title in and to a Unit, together with an undivided interest in the General Common Elements appurtenant to such Unit and the appurtenant Limited Common Elements.

(h) Owner means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more Condominium Units or an undivided interest therein.

(i) General Common Elements means and includes:

- (1) Real Property;
- (2) The foundations, columns, girders, beams, supports, decks, perimeter and supporting walls, roof, hallways and stairways of the Building;
- (3) The yards, terraces, gardens, fountain and parking areas;
- (4) The installations consisting of the materials making up the central services, such as power, light, gas, hot and cold water, and heating, which exist for common use;
- (5) The motors, fans, ducts and, in general, all apparatus and installations existing for common use;
- (6) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(j) Limited Common Elements means those parts of the General Common Elements reserved for use by fewer than all of the Owners of the Condominium Units.

(k) Common Expenses means and includes:

- (1) All sums lawfully assessed against the General Common Elements;
- (2) Expenses of administration, maintenance, repair or replacement of the General Common Elements;
- (3) Expenses agreed upon as Common Expenses by the Owners; and
- (4) Expenses declared Common Expenses by the provision of this Declaration and the Bylaws.

(l) Association means a Colorado non-profit Corporation, the Bylaws of which shall govern the administration of this Condominium Project, the members of which shall be all of the Owners.

(m) As used herein the term mortgage shall include any mortgage, deed of trust, or other similar security instrument given by an Owner and encumbering a Unit, and the term mortgagee shall include the holder of any mortgage as herein defined.

2. The Map shall be filed for record prior to the first conveyance of any Condominium Unit. Such Map shall consist of and set forth (a) the legal description of the surface of the land; (b) the linear measurements and location, with reference to the exterior boundaries of the land, of the Building and all other Improvements built or to be built on said land by Declarant; (c) the floor plans, the designation and the linear dimensions of each Unit; (d) the elevation plans of the Building; and (e) the elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane, and the bearing walls of the Building and the perimeter walls of each Unit with linear measurements showing the thickness of each.

3. The Real Property, including the Improvements thereon, is hereby divided into 28 fee simple estates as is set forth on Exhibit "A", attached hereto and incorporated by reference herein. Each such estate shall consist of a separately designated Unit and the undivided interest in and to the General Common Elements appurtenant to such Unit as set forth on Exhibit "A", attached hereto.

4. A portion of the General Common Elements is set aside and reserved for the use of the Owners of the respective Condominium Units, and such areas shall be known and referred to as the "Limited Common Elements". The Limited Common Elements so allocated and reserved are described, located or shown on the floor plans of the Map and by legend, symbol or words.

5. Each Unit and the undivided interest in the General Common Elements and any Limited Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit.

6. Every deed, lease, mortgage, trust deed or other instrument may legally describe a Condominium Unit as follows:

Condominium Unit No. _____, FOUNTAIN CONDOMINIUMS,
in accordance with and subject to the Declaration
recorded on _____, 19____, in
Book _____, at Page _____, and the Condominium
Map recorded on _____, 19____, in Book
_____, at Page _____, of the Adams
County Records.

Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect, not only the Unit, but also the General Common Elements and the Limited Common Elements, if any, appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress and for use of the General Common Elements, together with the right to use of the Limited Common Elements.

7. Declarant shall give written notice to the Assessor of Adams County, Colorado, of the creation of Condominium ownership of this Property, as is provided by law, so that each Unit and its percentage of undivided interest in the General Common Elements, shall be deemed a parcel and subject to separate assessment and taxation.

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

9. The General Common Elements shall be owned in common by all of the Owners 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.

10. Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

11. Each Unit shall be used and occupied solely for the purpose of lodging or as a dwelling by the Owner or by the Owner's family, guests, agents, employees, invitees, licensees, or tenants.

No nuisances shall be allowed or permitted upon the Project, nor shall any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Project by the residents thereof shall be allowed or permitted. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed or permitted to accumulate, nor any fire hazard allowed or permitted to exist. No Owner shall make or permit any use of his Unit or make or permit any use of the General Common Elements which will increase the cost of insurance on the property.

No immoral, improper, offensive or unlawful use shall be made of the Project, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

12. 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 shall and does exist, so long as it stands, or as it may hereafter be constructed in the event the Building is destroyed or damaged and thereafter restored, repaired or rebuilt. 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 shall and does exist, so long as it stands, or as it may hereafter be constructed in the event the Building is destroyed or damaged and thereafter restored, repaired or rebuilt. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General Common Elements or the Units.

13. No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Unit of any other 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.

14. The administration of this Condominium Property shall be governed by the Bylaws of the Fountain Condominium Owners Association, a Colorado non-profit Corporation, hereinafter referred to as the "Association". An Owner of a

Condominium Unit, upon becoming such an Owner, shall be a member of the Association and shall remain a member for the period of his ownership. The By-laws may contain provisions to implement the provisions of this Declaration, or such provisions may be subsequently adopted by amendment to the By-laws or by the adoption of rules and regulations. The Association shall be governed by a Board of Directors as is provided in the Articles of Incorporation and Association By-laws. The Board may delegate those maintenance and other duties relating to the General Common Elements to a managing agent at an agreed upon compensation or fee.

15. The Owners shall have the irrevocable right, to be exercised by the Manager 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, accessible therefrom, or for making emergency repair 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 resulting from the maintenance, repair, emergency repair or replacement of any of the General Common Elements or as the result of emergency repairs within another Unit shall be a Common Expense of all of the Owners; provided, however, that if such damage is caused or is the result of the negligent or tortious act of an Owner, members of his family, his agent, employee, invitee, licensee, or tenant, then such Owner shall be responsible and liable for all of such damage. All damaged Improvements shall be restored substantially to the same condition in which they existed prior to the damage. All maintenance, repairs and replacements of the General Common Elements, whether located inside or outside of Units (unless necessitated by the negligence, misuse or tortious act of an Owner, in which case such expense shall be charged to such Owner), shall be the Common Expense of all of the Owners.

16. An Owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures, appliances and equipment installed within the 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 Unit, shall be maintained and kept in repair by the Owner thereof. Utility fixtures and appliances (but not lines, pipes, wires, conduits or systems) which are not located within a Unit, but which exist for the purpose of providing a utility service for only one Unit shall be maintained and kept in repair by the Owner of that Unit.

17. 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.

18. An Owner shall not be deemed to own the utilities running through his Unit which are utilized for, or serve, more than one Unit, except as a tenant in common with the other Owners. An Owner, however, shall be deemed to own and shall maintain the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings; doors and windows and other elements consisting of paint, wallpaper, and other finishing materials and the interior non-supporting walls contained within the Unit.

19. Each Owner shall comply strictly with the provisions of this Declaration, the By-laws 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, maintainable by the

Manager or Board of Managers on behalf of the Owners or, in a proper case, by an aggrieved Owner.

20. 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 percent (70%), 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 Unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the Owners expressed in an amended Declaration duly recorded.

21. The maintenance and operation of the Common Elements shall be the responsibility of the Association and a Common Expense of all of the Condominium Unit Owners.

There shall be no addition, alterations or improvements of or to the General and Limited Common Elements by the Association requiring an assessment in excess of One Hundred Twenty Dollars per Unit in any one calendar year without prior approval of the majority of the members of the Association. Such approval shall be expressed by a vote in favor thereof by a majority of the members of the Association at a special or regular meeting of Association members. Such expenditures shall be a Common Expense. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any General or Limited Common Elements or common personal property. Nothing in this section shall preclude or in any manner limit the right of the Declarant or the mortgagee of any Owner to make such repairs or improvements in accordance with the applicable provisions of this Declaration.

All Owners shall be obligated to pay the estimated assessments imposed by the Board of Managers or Managing Agent of the Association to meet the Common Expenses. Except for insurance premiums, the assessments shall be made pro rata according to each Owner's percentage interest in and to the General Common Elements. Assessments for insurance premiums shall be based upon that proportion of the total premium(s) that the insurance carried on a Condominium Unit bears to total coverage. The Limited Common Elements shall be maintained as General Common Elements, and Owners having exclusive use thereof shall not be subject to any special charges or assessments. Assessments for the estimated Common Expenses, including insurance, shall be due monthly in advance on the first day of each month. The Managing Agent or Board of Managers shall prepare and deliver or mail to each Owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments are made.

Contribution for monthly assessments shall be prorated if the ownership of a Condominium Unit commences on a day other than the first day of a month.

22. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent or Board of Managers of the Association shall from time to time determine is to be paid by all of the Owners to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements, which sum may include, among other things, expenses of management; taxes and special assessments until separately assessed; fire with extended coverage and vandalism and malicious mischief with endorsements attached issued in the amount of the maximum replacement value of all of the Condominium Units (and also 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 and garbage collections; wages; water charges; legal and accounting fees; management fees; expenses and liabilities incurred by the Managing Agent or Board of Managers under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund, as well as other costs and expenses relating to the General Common Elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

The Managing Agent or Board of Managers shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other apartment or 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, which policy or policies shall identify the interests of each Condominium Unit Owner and which shall provide for a standard, non-contributory mortgagee clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice to each Owner and each first mortgagee. Said Managing Agent or Board of Managers shall, upon the request of any first mortgagee, furnish a certified copy of such blanket policy and the separate 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. Determination of maximum replacement value of all Condominium Units (for insurance purposes) shall be made annually by one or more written appraisals, copies of which shall be furnished forthwith to each mortgagee of a Condominium Unit. In addition, each Owner shall be notified of such appraisal(s).

23. 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.

24. All sums assessed but unpaid for the share of Common Expenses chargeable to any Condominium Unit shall constitute a lien on such Unit, superior (prior) to all other liens and encumbrances, except only for:

(a) Tax and special assessment liens on the Unit in favor of any assessing unit.

(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 encumbrances.

To evidence such lien, the Board of Managers or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit, and a description of the Condominium Unit. Such a notice shall be signed by one of the Board of Managers or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of Adams County, Colorado. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. 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 attorneys' fees. The Owner shall also be required to pay to the Association the monthly assessment for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid in the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the Common Expenses assessed against each Condominium Unit shall also be a 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.

Any encumbrancer holding a lien on a Condominium Unit may pay any unpaid Common Expense 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.

25. Upon payment of a reasonable fee not to exceed Ten Dollars 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 Board of Managers, shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Condominium Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including, but not limited to, insurance premiums, which 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 days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Condominium Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid. By reasonable fee, not to exceed Ten Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Managers, setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including, but not limited to, insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for any unpaid assessments against the subject unit.

26. 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 or encumbrance 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 mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for Common Expenses, and other obligations created by this Declaration and by the By-laws; (2) That the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon the 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.

27. In the event any Owner of a Condominium Unit, other than the Declarant, shall wish to sell the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining Owners shall be given immediate written notice thereof, together with an executed copy of such offer and the terms thereof. Such notice and copy shall be given to the Board of Managers for all of the Owners. The remaining Owners, through the Board of Managers, or a person named by them, shall have the right to purchase the subject Unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase is given to the selling Owner, and a matching down payment or deposit is provided to the selling Owner during the twenty-day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase.

In the event any Owner shall attempt to sell his Condominium Unit without affording the other Owners the right of first refusal herein provided, such sale shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser.

In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his interest in the Project parcel to a trust deed, mortgage or other security instrument.

The failure of or refusal by the Board of Managers to exercise the right to so purchase shall not constitute or be deemed to be a waiver of such right to purchase when an Owner receives any subsequent bona fide offer from a prospective purchaser.

Except as is otherwise provided in Paragraph 28, and except upon a transfer of title to a Public Trustee or to a mortgagee, each grantor of a Condominium Unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

28. In the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose same, and upon any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, such sale shall be made free and clear of the provisions of Paragraph 27, and the purchaser (or grantee under such deed in lieu of foreclosure) of such Condominium Unit shall be thereupon and thereafter subject to the provisions of this Declaration and the By-laws. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the condominium unit free and clear of the provisions of Paragraph 27, but its grantee shall thereupon and thereafter be subject to all of the provisions hereof.

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

(a) With respect to a proposed sale under Paragraph 27, proper notice was given by the selling or leasing Owner and that the remaining Owners did not elect to exercise their option to purchase;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, a deed from such first mortgagee or its nominee, pursuant to Paragraph 28, that the deeds were, in fact, given in lieu of foreclosure and were not subject to the provisions of Paragraph 27;

(c) With respect to any contemplated transfer which is not, in fact, a sale, that the transfer will not be subject to the provisions of Paragraph 27.

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

30. 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 Fountain Condominium Owners 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 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 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 granted by this Paragraph 30. Repair and reconstruction of the Improvements 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 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 all 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.

(b) If the insurance proceeds are insufficient to repair and reconstruct the Improvement(s), and if such damage is not more than fifty percent (50%) of all of the General Common Elements, 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 the authority to cause the repair or restoration of the 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 Condominium Unit and may be enforced and collected as is provided in Paragraph 24. In addition thereto, the Association, as attorney-in-fact, shall have 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 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 the balance of the lien of any first mortgage;

(2) For payment of taxes and special assessments liens in favor of any assessing entity;

(3) For payment of unpaid Common Expenses;

(4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

(5) The balance remaining, if any, shall be paid to the Condominium Unit Owner.

(c) If more than fifty percent (50%) of the General Common Elements, not including land, are destroyed or damaged, and if the Owners representing an aggregate

ownership interest of seventy percent (70%), or more, of the General Common Elements, do not voluntarily within one hundred 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, the entire remaining 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 insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into ~~twenty-eight separate accounts~~, or a lesser number on completion, each 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 number of the Unit and the name of the Owners. 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, toward the partial or full payment of the lien of any first mortgage against the Condominium Unit represented by such separate account. There shall be added to each such account the apportioned amount of 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 seventy percent (70%), 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 days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the 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 Condominium Unit and may be enforced and collected as is provided in Paragraph 24. 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 proceeds derived from 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.

(d) The Owners representing an aggregate ownership interest of ninety percent (90%) or more, of the General Common Elements, may agree that the General Common Elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the Owners as Common Expenses; provided, however, that any Owner not agreeing to such renewal or

reconstruction may give written notice to the Association that such Unit shall be purchased by the Association for the fair market value thereof. 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 "commencing 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 who shall be a member of the Denver Board of Realtors, and the appraisers nominated shall appoint another appraiser (to be selected from the Denver Board of Realtors). The decision of the appraisers as to the fair market value shall be final and binding. The expenses and fees of such appraisers shall be born equally by the Association and the Owner. The sale shall be consummated within fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraph (b) (1) through (5) of this paragraph.

(e) The Owners representing an aggregate ownership interest of eighty percent (80%) or more, of the General Common Elements, may agree that the General Common Elements of the property are obsolete and that the same should be sold. Such agreement or 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, 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 twenty-eight separate accounts, or a lesser number on completion, 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 number of the Unit 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.

31. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board of Managers of the Association or the Association shall be sent by certified mail, postage prepaid, to O'Hanlon & Co., Realtor, 2124 South Birch Street, Denver, Colorado 80222, until such address is changed by a notice of address change duly recorded.

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

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

34. 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 _____, 1974.

Regene Jegier Nacheff
REGENE JEGIER NACHEFF, Declarant

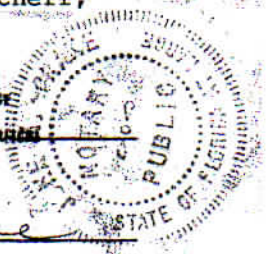
STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 19th day of September, 1974, by Regene Jegier Nacheff, Declarant.

WITNESS my hand and official seal.

My commission expires: _____
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES OCT. 2, 1977
BONDED THRU GENERAL INSURANCE UNDERWRITERS

June M. Crane
Notary Public



4
B 1 3 8 6 9 3

138693

WILLIAM SOKOL
COUNTY RECORDER
ADAMS COUNTY, COLO.

BOOK 2247 PAGE 344

JUN 15 8 00 AM '78 BINDING LETTER OF INTENT

KNOW ALL MEN BY THESE PRESENTS AS FOLLOWS:

1. That the undersigned is the successor in interest to the declarant of that certain Condominium Declaration Of Fountain Condominium heretofore recorded on October 7, 1974, in Book 1957 at Page 640 of the records of the Clerk and Recorder of the County of Adams, State of Colorado.

2. That Article III, Paragraph 8 of the By-Laws of Fountain Condominium Owners Association provide that the rights, duties, and functions of the board shall, at the declarant's option, be exercised by the declarant by and through those persons named as directors in the Articles of Incorporation, until the development of the entire project has been completed and until all condominium units have been sold.

3. That the undersigned, in order to induce purchasers to purchase said condominium units and to induce lenders to make loans in excess of 80% of the value of said condominium units desires to bind itself to transfer control of the Fountain Condominium Owners Association to the purchasers of said condominiums after the sale of more than 50% of the condominium units.

4. That, in consideration of and as an inducement to said purchasers and lenders, the undersigned does hereby agree to, and shall, relinquish control of the Fountain Condominium Owners Association upon, and immediately after, the sale of more than 50% of said condominium units.

5. That any purchaser or lender may rely upon this Letter Of Intent in purchasing any condominium unit or making a loan thereon.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal this 17 day of May, 1978.

TABAMAK, INC.


M. J. Reilly, President

FIRST AMENDMENT TO
CONDOMINIUM DECLARATION
OF
FOUNTAIN CONDOMINIUM

JUN 22 8 00 AM '78
WILLIAM J. BROS.
COUNTY RECORDER
ADAMS COUNTY, COLO.

B 1 3 9 9 1 8

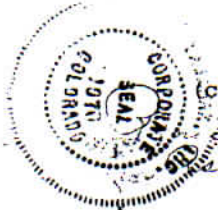
KNOW ALL MEN BY THESE PRESENTS, pursuant to paragraph 20 of that certain Condominium Declaration of Fountain Condominium heretofore recorded on October 7, 1974, in Book 1957 at Page 640 of the records of the Clerk and Recorder of the County of Adams, State of Colorado, the undersigned, as the owners representing an aggregate ownership interest of 70%, or more, of the general common elements, and all of the holders of any recorded mortgage or deed of trust covering or effecting any or all condominium units, unanimously consent, agree, and do hereby amend the aforesaid Condominium Declaration Of Fountain Condominium by deletion of the following paragraph found in paragraph 27 on page 9 of said Condominium Declaration:

"In the event any Owner shall attempt to sell his Condominium Unit without affording the other Owners the right of first refusal herein provided, such sale shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser."

The foregoing paragraph to be wholly deleted and without further force and effect.

IN WITNESS WHEREOF the undersigned have hereunto set their hands and seals on the dates indicated by their signature.

TABAMAK, INC.



(corporate seal)

By M. J. Reilly
M. J. Reilly, President
Date 5/17/78

BANK OF APPLEWOOD
By [Signature]
Date 5-17-78

ATTEST:
[Signature] A.C.

PLATTE VALLEY BANK
By [Signature] VP
Date 5/17/78

ATTEST:
[Signature]

William P. Gaschler
William P. Gaschler

Date 5-18-78

Helen Gaschler
Helen Gaschler

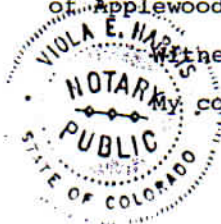
Date 5-18-78

Regene Nacheff Reilly
Regene Nacheff Reilly

Date 5/22/78

STATE OF COLORADO)
)
COUNTY OF Jefferson) ss.

Subscribed and sworn to before me this 17th day of May, 1978, by Harold I. Bacheller, Jr. as Vice-President and Daniel R. Worthington as Assistant Cashier of the Bank of Applewood.



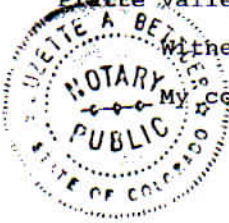
Witness my hand and official seal.

My commission expires: April 29, 1981

Viola E. Hager
Notary Public

STATE OF COLORADO)
)
COUNTY OF ADAMS) ss.

Subscribed and sworn to before me this 17 day of May, 1978, by D. R. Kominski as Vice President and Betty J. Butz as Cashier of the Platte Valley Bank.



Witness my hand and official seal.

My commission expires: May 13, 1979

Myrtle A. Betzger
Notary Public

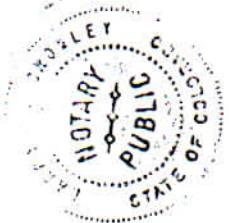
STATE OF COLORADO)
)
COUNTY OF Adams) ss.

Subscribed and sworn to before me this 17 day of May, 1978, by M. J. Reilly, as President of Tabamak, Inc. and Renie Cumb as Ass't Secretary

Witness my hand and official seal.

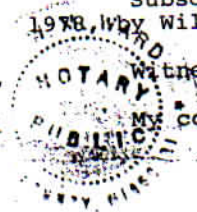
My commission expires: August 12, 1981

Larry R. Crowley
Notary Public



STATE OF Missouri)
COUNTY OF Barry) ss.

Subscribed and sworn to before me this 18th day of May, 1978, by William P. Gaschler.



Witness my hand and official seal.

My commission expires: January 31, 1979

W.M. Ward
Notary Public W.M. Ward

STATE OF Missouri)
COUNTY OF Barry) ss.

Subscribed and sworn to before me this 18th day of May, 1978, by Helen Gaschler.



Witness my hand and official seal.

My commission expires: January 31, 1979

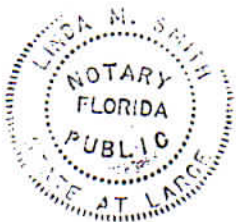
W.M. Ward
Notary Public W.M. Ward

STATE OF Florida)
COUNTY OF Volusia) ss.

Subscribed and sworn to before me this 22 day of May, 1978, by Regene Nacheff Reilly.

Witness my hand and official seal.

My commission expires: Notary Public, State of Florida at Large
My Commission Expires Aug. 19, 1978
Bonded by American Fire & Casualty Co.



Linda M. Smith
Notary Public