

AUG 11 1980

CONDOMINIUM DECLARATION

for

WESTWOOD ESTATES

A Planned Unit Development

RECITALS

A. T. L. Benson, Inc., a Colorado corporation, hereinafter called "Declarant," is the owner of real property situate in the City of Grand Junction, County of Mesa, State of Colorado, which property is described as follows:

Beginning at a point on the South line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, Township 1 South, Range 1 West of the Ute Meridian from whence the Southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ bears South 89°57' West 727.6 feet, thence North 89°57' East 199.0 feet to the West right-of-way line of the Highline Grand Valley Canal; thence along said Canal right-of-way North 11°58'45" East 96.84 feet; thence North 63°45' East 134.6 feet; thence North 68°36'22" East 90.0 feet; thence North 35°27'30" East 67.0 feet; thence North 32°24'30" East 97.7 feet; thence North 20°07' East 67.7 feet; thence North 16°14' East 114.7 feet; thence North 0°34' West 90.0 feet; thence North 04°32' East 210.7 feet to the Southerly right-of-way of the Independent Ranchman's Ditch near the East line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2; thence South 50°49'17" West 108.34 feet; thence South 40°13' West 81.8 feet; thence South 73°35' West 64.6 feet; thence South 51°39' West 150.0 feet; thence South 45°45' West 110.4 feet; thence South 51°56' West 132.5 feet; thence South 49°53' West 60.0 feet to the Westerly right-of-way of the Grand River Valley Railroad (abandoned); thence North 52°33' West 134.06 feet to the Southerly right-of-way of Horizon Drive; thence along said right-of-way line South 53°51' West 220.6 feet to the Easterly right-of-way of the Mainline Canal of the Grand Valley Irrigation Company; thence South 50°59' East 70.0 feet; thence South 52°27' East 100.0 feet; thence South 33°11' East 123.8 feet; thence South 22°56' 45" East 109.88 feet to the South line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 2 and the point of beginning (hereinafter "Real Property").

B. Declarant desires to establish a condominium project under the Condominium Ownership Act of the State of Colorado, and does hereby submit the Real Property to such ownership, subject to this Declaration, and,

C. Declarant has executed plans for the construction of one and two-story buildings and other improvements appurtenant thereto on the Real Property which when completed shall consist of sixty (60) separately designated condominium units; and

D. Declarant wishes to and does hereby establish a plan for the ownership in fee simple of real property estates consisting of the area or space contained in each of the air space units in the buildings and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property which is hereinafter defined and referred to as the 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 described in Recital A above, and any additional land hereafter annexed and placed under this Declaration in accord with Section 37 of this Declaration, and, shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the Real Property and improvements, their grantees, successors, heirs, executors, administrators, devisees or assigns. As more fully discussed elsewhere in this Declaration, this Declaration replaces entirely and supercedes that Declaration for "Westwood, A Planned Unit Development" filed for record on October 16, 1979 at Book 1223 and Page 299 of the records of Mesa County, Colorado.

PROVISIONS

1. Definitions. Unless the context shall expressly provide otherwise, the following definitions apply:

(a) "Air space unit" shall be as defined in Colorado Revised Statute § 38-33-103(4), and shall refer to enclosed room(s) having access to a public street. The boundaries of any air space unit shall be the unfinished walls, floors and ceilings of such enclosed rooms. Fireplaces and the interiors of chimneys (up to the boundaries of the flues) shall be considered a part of the air space unit.

(b) "Condominium unit" means one individual air space unit which has access to a public street, together with an interest in the general common elements and the limited common elements appurtenant to such unit;

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

(d) "General common elements" means and includes;

(1) The real property described in Recital A above;

(2) The foundations, columns, girders, beams, supports, perimeter and supporting walls, including exterior parts of chimneys but excluding the chimney flue, roofs, halls, corridors, stairs and stairways of the building;

(3) The yards, gardens, walkways, promenades, parking areas for the general public, or otherwise unassigned to specific condominium units, and street;

(4) The installations consisting of the equipment and materials making up the central services such as power, light, gas, hot and cold water, and heating and air conditioning;

(5) The tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(6) Such enclosed air spaces as are provided for community or common use, including the Westwood Commons meeting house if provided by Declarant; and

(7) A security gate on the front entrance, if the Association should hereafter choose to provide one at its own expense;

(8) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(e) "Limited common elements" means and includes a portion of the common elements set aside and reserved for the exclusive use of the individual owners of the respective condominium units. The limited common elements include the balcony or patio adjoining and associated with such unit, the air conditioning unit associated with each such unit, a storage space assigned by the Association or its duly authorized agents to such unit, and carport spaces assigned by the Association or its duly authorized agents to such units.

(f) "Entire premises" or "Property" or "Project" means and includes the Real Property described in Recital A above, the buildings and all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

(g) "Common expenses" means and includes:

(1) All sums lawfully assessed against the unit owners by the Managing Agent or Board of Directors for the benefit of the general common elements;

(2) Expenses of administration and management, maintenance, repair or replacement of the general common elements;

(3) Expenses declared common expenses by provisions of this Declaration and the By-Laws; and

(4) Expenses agreed upon as common expenses by the unit owners.

(h) "By-Laws" means the By-Laws of the Association as required by the Colorado Condominium Act, as amended.

(i) "Association of Unit Owners" or "Association" means a Colorado non-profit corporation, the By-Laws of which, together with this Declaration, shall govern the administration of this condominium Property, and the members of which shall be all of the owners of the condominium units. The official name of the Association shall be: Westwood Estates Association, a Colorado Non-Profit Corporation. The Board of Directors shall manage the Association. Unless the By-Laws provide differently, the Board of Directors may appoint a Managing Agent to carry on the day-to-day business of the Association.

(j) "Building" refers to any of the several separate and distinct free standing structures to be constructed on the Property, each of which is composed of one or more units, the Westwood Commons meeting house or storage facilities.

(k) "Map" means the drawings or diagrammatic plans, be they one or more, depicting a part of or all of the Real Property described in Recital A and the improvements constructed thereon, which Map shall be filed for record in accord with Section 2 below.

2. Map. The Map, which shall be composed of one or more sheets or documents, including the Condominium Map of Westwood Estates, General Layout, and the Condominium Map of Westwood Estates, Building(s) _____, shall be filed for record prior to the first conveyance of any condominium unit. All parts of the Map shall be denominated "Condominium Map of Westwood Estates," and no previously filed survey map

or site plan of the Property shall be effective as the Map without such denomination except as to show easements. The Map may be filed in several stages, so long as no unit is conveyed that is not properly depicted on part of the Map. Such Map shall consist of and set forth at least the following: (1) the legal description of the surface of the land; (2) the outside linear measurements and location, with reference to the exterior boundaries of the land, of the buildings and all other improvements built or to be built on said land by Declarant; and (3) the proper location and designation of each unit.

Prior to the first conveyance of a condominium unit, there shall be filed for record as a part of the Map a certificate of a registered architect or licensed professional engineer certifying that the improvements as constructed conform substantially to the Map and that the Map depicts the layout, measurements and location of all of the improvements on the land, and the unit designations.

The Map may be amended at any time prior to the first conveyance of a unit, at the sole discretion of the Declarant, provided such amendment substantially conforms to the provisions of this Declaration. The Map may be amended at any time subsequent to the first conveyance, provided that a majority in interest, i.e., by majority vote, of the then owners (including Declarant) consent to any such amendment. However, any amendment to the Map which would bring about a material alteration to the Project must be approved in writing by 100% of the owners and holders of first mortgages.

In interpreting the Map, the actual physical boundaries of each unit shall be conclusively presumed to be the legal boundaries of such unit.

3. Division of Property. The Property is hereby divided into the following fee simple estates:

(a) Sixty (60) fee simple estates consisting of sixty separately designated air space units and their associated limited common elements.

(b) The remaining portion of the entire premises shall be the general common elements and shall be held in common by the owners, each such undivided interest being one-sixtieth (1/60) of the general common elements and each such undivided interest being appurtenant to one of the sixty units.

4. Inseparability of a Condominium Unit. Each air space unit, the limited common elements appurtenant thereto, and the undivided interest in the general common elements shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit. There may be no partition or subdivision of an individual condominium unit. Further, any proposed sale, abandonment, subdivision, encumbrance, partition or transfer of the common elements (other than for public purposes such as the granting of public utility easements) shall have, at minimum, the prior written approval of two-thirds (2/3) of all first mortgagees, as well as comply with all other provisions of this Declaration.

5. Legal Description. Every deed, lease, mortgage, trust deed or other instrument may legally describe a condominium unit by reference to the identifying unit number as shown on the Map followed by the words "Westwood Estates," with further reference to Book and Pages or Reception Number of the records of the Clerk and Recorder of Mesa County, Colorado where the Map and this Condominium Declaration is recorded. The following description is sufficient:

Condominium Unit _____, Building _____, WESTWOOD ESTATES, according to the Condominium Declaration recorded _____, 19__ in Book _____ at Page _____, the Condominium Map of Westwood Estates, General Layout, recorded at Reception Number _____ on _____, 19__, and the Condominium Map of Westwood Estates, Building _____, recorded at Reception Number _____ on _____, 19__, all in the Mesa County, Colorado records.

Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect the general common elements and the limited common elements appurtenant to the particular air space unit, and each description shall be construed to include a nonexclusive easement for ingress and egress to the air space unit and for use of the general common elements, together with the right of the particular unit owner to the use of limited common elements. Every such description shall be presumed to include the condominium unit described as such unit is defined in the Declaration.

6. Separate Tax Assessment. Declarant or its successors shall give written notice (as required by the Colorado Condominium Ownership Act) to the assessor of Mesa County, Colorado, of the creation of condominium ownership of this property, so that each air space unit, its appurtenant limited common elements, and its percentage of undivided interest in the general common elements shall be deemed a parcel and subject to separate assessment and taxation as a condominium unit.

7. 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 other real property tenancy relationship recognized under the laws of the State of Colorado.

8. 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 (so long as such partition conforms to this Declaration and the By-Laws), but such partition shall not affect any other condominium unit.

9. Use of Units and General and Limited Common Elements.

Each owner shall be entitled to exclusive use, ownership and possession of his air space unit and use of 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 and subject to reasonable rules and regulations promulgated by the Association. Use of the limited common elements shall be by the owner of the particular unit to which it is appurtenant, or, in the case of carports and storage spaces, by the owner to whom such limited common elements are assigned by the Association.

10. Use and Occupancy. Each air space 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 business shall be conducted in any condominium unit; except that the Declarant and the Association may conduct such business as they deem necessary for the development and operation of the project.

11. Easements for Encroachments. If any portion of the general common elements encroaches upon any air space unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of an air space unit encroaches upon the general common elements or upon any adjoining unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist, so long as that general common element is not rendered nonfunctional. However, for title or other purposes, such encroachment(s) and easement(s) shall not be considered or determined to be encumbrances either on the general common elements or the air space units.

12. Termination of Mechanic's Lien Rights and Indemnification. Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a condominium unit with the consent or at the request of the owner thereof or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the condominium unit of any other condominium 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 an attempted claim of any lien against the condominium unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in, or partly in, the owner's condominium unit at such owner's request.

13. Administration and Management; Voting. The administration of the Property shall be governed by and in compliance with the Certificate of Incorporation and the By-Laws of the Association. Among other things, the Association is empowered to assign to individual owners storage and parking spaces, for their exclusive use as limited common elements. A certified copy of the Certificate of Incorporation of the Association shall be filed for record in the County of Mesa, Colorado. 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.

Each owner shall be entitled to one vote per condominium unit owned, except the Declarant and successors to the Declarant expressly designated in writing by the Declarant to be so entitled. The Declarant and its designated successors, if any, shall be entitled to one hundred and eighty (180) votes less three (3) votes per each condominium unit actually

conveyed of record; provided however, that at such time as the number of Declarant's (or its successors) votes are equalled by the number of votes of other members, all owners, including the Declarant and all its successors, shall be entitled to only one vote per condominium unit owned.

14. Maintenance, Repair and Emergencies. The Association shall have the obligation, to be exercised by the Managing Agent or Board of Directors, to perform necessary maintenance, repair or replacement of any of the general common elements and to make emergency repairs to the air space units or limited common elements necessary to prevent damage to the general common elements or to any other air space unit or units. The Association shall have the irrevocable right, to be exercised by the Managing Agent or Board of Directors of the Association, to have reasonable access to each air space unit from time to time as may be necessary for the performance of its maintenance and repair obligations.

Damage to the interior or any part of any air space unit resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of emergency repairs within another air space 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 negligence or other fault of a condominium unit owner, then such condominium unit owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be made to substantially the same condition in which they existed prior to the damage.

15. Owners' Maintenance Responsibility of Unit. An owner shall maintain and keep in repair the interior of his own air space unit, including wall and ceiling finishes, floor coverings, and fireplaces and flues, and the limited common elements appurtenant thereto including the fixtures thereof. All fixtures and equipment installed within the air space unit, commencing at a point where the utility lines, pipes, wires, conduits or other systems (hereafter referred to as "utilities") enter the air space unit, shall be maintained and kept in repair by the owner thereof.

16. Limitations on Owner's Alterations. An owner shall do no act nor any work which will impair the structural soundness or integrity of any building or impair any easement or hereditament.

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition, change, decoration or alteration therein or thereto be made until written plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an Architectural Committee composed of three or more owners appointed by the Board. In the event said Board or the Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with. No planting, or gardening or removal of trees shall be done, and no fences, hedges, walls or

other improvements or structures shall be erected or maintained in or upon the common facilities, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or the Architectural Committee. Except for the right of ingress and egress, the owners are hereby prohibited and restricted from using any of the Property outside the exterior boundary lines of their respective air space units, except as may be allowed by the Association's Board of Directors and this Declaration. All parties expressly acknowledge and agree that this Section 16 is for the mutual benefit of all owners and is necessary for their protection.

17. Extent of Ownership for Maintenance Purposes. An owner shall not be deemed to own the undecorated and/or unfinished surfaces of the outside perimeter walls (or the supporting members of such walls), floors and ceilings surrounding his respective unit, nor shall such owner 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 (as part of his air space unit) and shall maintain the interior decorated and/or finished surfaces of the perimeter walls, floor and ceilings, doors and windows and other elements consisting of paint, wallpaper and other interior finishing materials and the interior non-supporting walls contained within the unit.

18. Compliance with Provisions of Declaration and By-Laws. 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 adopted pursuant thereto, as the same may 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 for injunctive relief, or both, maintainable by the Managing Agent or Board of Directors on behalf of the owners or, in a proper case, by an aggrieved owner.

19. Revocation or Amendment to Declaration. Except as provided in Sections 36 and 37, this Declaration shall not be revoked nor shall any of the provisions herein be amended (except the Map, which may be amended as provided earlier in Section 2 of this Declaration), unless the owners of seventy-five percent (75%) or more of the condominium units and seventy-five percent (75%) or more of the holders of any recorded first mortgage or first deed of trust covering or affecting any condominium units agree to such revocation or amendment by written instruments duly recorded in the records of Mesa County. Prior to the construction and conveyance of record of the condominium units on the Property, Declarant shall be considered the owner of all unconveyed units for the purposes of amendment and revocation of this Declaration. However, the percentage of undivided interest in the general common elements (which percentage interest is appurtenant to each unit, as expressed in this Declaration) shall have a permanent character and shall not be altered without the consent of ninety percent (90%) of the condominium unit owners and all holders of any recorded mortgage or deed of trust as expressed in a duly recorded amendment to this Declaration. Further, where the Association obtains a

legal opinion that a proposed amendment of this Declaration would materially alter the basic character of the Project, the Association may require the written consent of one hundred percent (100%) of the condominium unit owners and holders of first encumbrances as a prerequisite to permitting the amendment in order to ensure adequate title insurance availability for all interested parties.

20. Assessment for Common Expenses. All owners shall be obligated to pay estimated assessments, as more fully described in Section 21 below, imposed by the Board of Directors to meet the common expenses. The assessments shall be made pro rata according to each owner's percentage interest in and to the general common elements; provided however, that where an assessment or portion thereof is made for the repair, replacement or maintenance of any of the limited common elements, the Association may charge such assessment only to those owners having an appurtenant interest in such limited common elements. Assessments for the estimated common expenses, including insurance, shall be due monthly in advance on the first day of each month. All assessments remaining unpaid by the twentieth day of the month shall be considered delinquent and bear interest at the rate of twelve percent (12%) per annum from the date the assessment was first due. The Managing Agent or Board of Directors shall prepare an itemized annual statement showing the various estimated or actual expenses for which assessments are made. Such statement will be available for inspection by any owner at reasonable times.

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, or for any other reason.

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.

21. Items for Which Assessments May be Made. Assessments shall be based upon the aggregate sum of the cash requirements which the Board of Directors of the Association shall from time to time determine is to be paid by the owners of units conveyed by Declarant or offered for sale by Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general and limited common elements. This sum may include, among other things, expenses relative to: management, taxes and special assessments by any governmental entity until separately assessed; premiums and other costs associated with property, fire, casualty, liability, and other insurance obtained by the Association pursuant to Section 22 of this Declaration; proper and adequate landscaping and care of grounds; all necessary general maintenance and upkeep; repair and reconstruction following disasters and other causes as discussed in Section 26; 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 Directors 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 and limited 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.

22. Insurance. The Managing Agent or Board of Directors shall obtain and maintain upon or before the conveyance by Declarant of thirty (30) units insurance of the type and kind provided in Subsections (a) and (b) below. The Association may also obtain other insurance of a nature which is or shall hereafter customarily be obtained with respect to other condominium projects in the State of Colorado and which is 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 at least ten (10) days' prior written notice to each owner and each first mortgagee. The Managing Agent or Board of Directors shall, upon the reasonable request of any first mortgagee, furnish a copy of such blanket policy and the separate certificate identifying the interest of the mortgagor.

The following insurance coverage shall be maintained:

(a) Property Insurance. The Association shall obtain insurance on the general common elements in such amounts as shall provide for full replacement thereof in the event of damage or destruction resulting from the perils against which such insurance is obtained; such perils being at least those which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of

prudent business judgment, obtain insurance against. Such insurance shall include fire and extended coverage, vandalism, and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Liability Insurance. The Association shall purchase broad form Comprehensive General Liability coverage in such amounts and in such forms as it deems advisable. Coverage shall be written on an occurrence basis and may include, without limitation, liability for personal injury, elevators, water damage, contractual obligations, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project.

The following insurance coverage may be maintained:

(c) Workmen's Compensation and Employers' Liability Insurance. The Association may purchase Workmen's Compensation and Employer's Liability Insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law as it deems necessary.

(d) Property Insurance on Limited Common Elements and Individual Air Space Units. The Association may obtain and maintain fire insurance on the limited common elements and individual air space units with extended

coverage and vandalism and malicious mischief insurance, with endorsements attached issued in the amount of the maximum cost of replacement value of all such elements and air space units in the Project (including fixtures, interior walls and partitions, decorated and finished surfaces or perimeter walls, floors and ceilings, doors, windows and other elements or materials comprising a part of the air space units).

Each owner shall be responsible for insurance coverage on his own personal property, together with public liability coverage for occurrences within the air space unit, or occurring on limited common elements associated with his air space unit.

Where any policy of insurance, whether obtained by the Association for protection of the general common elements or other reason or obtained by an individual owner, provides that such insurance may be invalidated or suspended where the insured or some other person has been negligent, intentionally at fault, in breach of any warranty or other representation, or has committed any other act or omission, including the failure to pay any insurance premium due, such that he is not entitled to collect the proceeds of the insurance policy, then that insurance shall be invalidated or suspended only as to the interest, if any, of the particular owner or other person at fault, and shall remain in full force and effect as to all other parties (including other owners or the Association) whom such insurance policy was intended to benefit.

23. Lien for Non-Payment of Assessments for Common Expenses.
All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit, including interest

thereon at the rate of twelve percent per annum, shall constitute a lien on such unit superior and prior to all other liens and encumbrances, except only for:

(a) Tax and special assessment liens on the unit in favor of any assessing governmental or quasi-governmental entity, and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance.

To evidence such lien the Board of Directors or Managing Agent may, but shall not be required to, prepare a written notice or claim of lien 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 notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of Mesa County, Colorado. Such lien for 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 proceedings, the non-paying owner agrees to pay 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 a reasonable rental 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 the foreclosure sale and to

acquire and hold, lease, mortgage and convey the same. The proceeds from any such sale shall be distributed to satisfy first mortgages or first deeds of trust (unless the lien for assessment is foreclosed subject to such encumbrance), taxes and special assessments, unpaid assessments by the Association, junior liens, and the owner's equity, in that order.

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 may be maintainable by the Association without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a condominium unit may, but shall not be required or liable to, pay any unpaid condominium expense payable with respect to such unit, and upon such payment such encumbrancer shall have a new lien on such unit for the amounts paid of the same rank as his original encumbrance.

24. Liability for Common Expense Upon Transfer of Condominium Unit. Upon payment of a reasonable fee not to exceed Twenty Dollars (\$20.00) and upon the written request of any owner or prospective owner, or any mortgagee or prospective mortgagee of a condominium unit, the Association, by its Managing Agent or Board of Directors, shall issue a written statement of account setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advance payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good

faith. If requested, such statement shall pertain only to such default or lack of payment by the unit owner in question which has not been cured in sixty days. Unless such request for a statement of indebtedness shall be complied with within thirty days of such request, all unpaid common expenses which became due prior to the date of the receipt of such request shall be subordinate to the interest, if any, acquired thereafter in good faith by the requesting entity.

Except as provided above, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

25. Mortgaging a Condominium Unit - Priority. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create junior mortgages on the following conditions: (1) except as provided in Section 24, any junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other obligations created by this Declaration and the By-Laws; (2) the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of its right, title and interest in and to the proceeds under all insurance policies upon said premises which were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished within ten (10) days by a junior mortgagee upon written request of the Association.

26. Destruction or Obsolescence of the Project. This Declaration does hereby make mandatory the irrevocable appointment of the Association as 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 owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the Property, as is hereafter provided, upon its destruction or obsolescence. 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 contracts, deeds or other instruments with respect to the interest of any and all condominium unit owners which are necessary and appropriate to exercise the powers herein granted by this Section 26.

"Repair and reconstruction" of the improvements as used in the succeeding subsections means restoring the project to substantially the same condition in which it existed prior to the damage, with each air space 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 the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) Damage Sufficiently Covered by Insurance. In the event of damage or destruction due to fire or other cause, and if insurance proceeds are sufficient to reconstruct the improvements, then the proceeds shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements 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) Insufficient Insurance - Minor Damage. If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if less than forty percent (40%) of all of the condominium units are destroyed or seriously damaged, 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 damaged units. Such deficiency assessment shall be a common expense and made pro rata according to each damaged unit's percentage interest in the general common elements, and shall be due and payable within thirty days after written notice to the owner of such damaged unit. 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.

(c) Insufficient Insurance - Major Damage. If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if more than forty

percent of all of the condominium units are destroyed or seriously damaged, and if the owners representing an aggregate ownership interest of eighty percent (80%), or more, of the general common elements do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, which plan must have the 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. However, any such plan of sale must be approved by two-thirds of the first mortgagees (based upon one vote for each mortgage owned). 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 sixty separate accounts representing each 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. There shall be added to each such account 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 separate account shall be used and disbursed by the Association, without

contribution from one account to another, toward the partial or full satisfaction of the first mortgage, taxes and special assessments, unpaid assessments by the Association, and junior liens against the unit represented by such separate account, in that order. Any remaining funds shall be paid to the owner of the particular unit.

If the owners representing an aggregate ownership interest of eighty percent (80%) 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 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 Section 23.

(d) Obsolescence-Reconstruction. Owners representing an aggregate ownership interest of eighty-five percent (85%) or more, of the general common elements, may agree that the condominium units are obsolete and that

the same should be renewed or reconstructed, or, in the alternative, that the project should be terminated or abandoned. Such agreement must have the unanimous approval of every first mortgagee. In such instance, 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 construction 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 shall be measured. Within ten days following the commencing date, each party shall nominate in writing, and give notice of such nomination to the other party, an appraiser who shall be a licensed Colorado Real Estate Broker and be qualified to make appraisals of condominiums and similar property in Mesa County, Colorado. If either party fails to make such nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another similarly qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another similarly qualified appraiser to be arbitrator between them, if they can agree on such person. If they are unable to agree upon such arbitrator, then he shall be selected from the

panel of arbitrators of the American Arbitration Association. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the arbitrator, shall be final and binding. The expenses and fees of such appraisers or arbitrator or both 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 as is provided in subsection (c) of this section.

(e) Obsolescence - Sale. Owners representing an aggregate ownership interest of eighty-five percent or more, of the general common elements, may agree that the condominium units are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, 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 among 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 representing each 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 such accounts, without contribution from one account to

another, for the same purposes and in the same order as is provided in subsection (c) of this Section.

27. Consequences of Condemnation. If at any time during the existence of the condominium ownership pursuant to this Declaration all or any part of the property is taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the Association will divide any condemnation award in accord with each owner's pro rata amount of loss or diminution in value, and distribute the award in the same order as is provided in subsection (c) of Section 26. If as the result of any condemnation, one or more complete units are completely taken by the condemnor, then, after distribution of the condemnation award, those owners will cease to be members of the Association and lose all voting rights. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratios in accord with the new pro rata shares of ownership.

28. Personal Property for Common Use. Prior to the termination by Declarant of all its ownership in any and all units, and after conveyance by Declarant of thirty units, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property, if any, furnished by Declarant and located on the Real Property and which is intended for the common use and enjoyment of the condominium unit owners and occupants. The Association shall hold title to such property for the use and enjoyment of the condominium unit owners and occupants. No owner shall have any other interest and right thereto and all such right and interest shall absolutely terminate upon the owner's termination of ownership of his condominium unit.

29. Mailing of Notices. Each owner may register a mailing address with the Association. All legal notices or demands intended to be served upon any owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address, or, if no address was so registered, at the mailing address of his condominium unit. All the notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the By-Laws of the Association. All notices or demands intended to be served on mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section.

30. Continuity; Period of Ownership. The separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked, modified, amended or terminated as provided in Sections 19, 26, 36 and 37 of this Declaration.

31. Severability. 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.

32. Other Laws. 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.

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

34. Continuing Obligation. All obligations of any owner, other than Declarant, under and by virtue of this Declaration, the Articles of Incorporation of the Association, and the By-Laws shall continue, notwithstanding that the owner may have conveyed his interest. However, an owner shall have no obligation for expenses or other obligations accruing after the conveyance of a unit.

35. Transferability. Any rights or interest reserved hereby to the Declarant may be transferred or assigned by the Declarant. This Declaration shall be binding upon the undersigned, its successors and assigns.

36. Modification. Declarant reserves the absolute right to make modifications, additions or deletions in or to this Declaration prior to the conveyance of any unit. Declarant further reserves any rights it might have to amend this Declaration in order to comply with any applicable Federal Home Loan Mortgage Company (FHLMC) rules or regulations.

37. Annexation. Declarant reserves the right to add lands to be annexed to Westwood. Such annexation will be accomplished by filing for record a Supplemental Declaration which declares such annexed lands to be governed by this Declaration. Declarant further states that the Project is not now subject to additions, expansions or phasing, except, of course, as such is set forth in the Condominium Map of Westwood Estates, General Layout.

38. Construction Loan. The Property may be made subject to a construction loan or such other type of encumbrance as Declarant deems necessary to construct the project.

39. No Warranties. Declarant makes no warranties or other representations except as specifically set forth in this Declaration.

40. Unsold Units. Though Declarant contemplates the sale of one hundred percent (100%) of the units planned, Declarant reserves the right to retain unsold units and sell, lease or rent them without the approval of the Association so long as Declarant uses due care and diligence regarding the good character, habits, and general desirability of the tenants or purchasers.

41. Obligations of Declarant. At such time as Declarant has conveyed one hundred percent (100%) of the units originally owned by it, or Declarant's complete interest in the Project, all Declarant's obligations under this Declaration, specifically including obligations, if any, to construct, maintain or repair, any building or other improvement, shall terminate completely.

42. Governing Instrument. This Declaration replaces and entirely supercedes an earlier Condominium Declaration for "Westwood, A Planned Unit Development" filed in the Mesa County Records on October 16, 1979 at Book 1223, Page 299. The authority for this replacement is set forth in Section 36 of the formerly recorded Declaration.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 11 day of August, 1980.

T. L. BENSON, INC.

By T. L. Benson
T. L. Benson, President

ATTEST:

Marius J. Benson
Secretary

S E A L



