

Notary Public in and for the State of Colorado, P. M. Kearney, Notary Public  
 My commission expires December 31, 1979. 1:45  
 347153  
 P. M. Kearney

CONDOMINIUM DECLARATION

FOR

EVERGREEN CONDOMINIUMS

This Condominium Declaration, made this 26th day of December, 1978, at Gunnison, Gunnison County, Colorado by Partridge-Garland Associates, an Oklahoma partnership.

1. STATEMENT OF INTENT AND PURPOSE.

1.1 Authority: This Condominium Declaration is executed to submit the real property set forth in paragraph 2.14 hereof to condominium ownership pursuant to Article 38, Title 38, Colorado Revised Statutes, 1973, as amended, and referred to as the "Condominium Ownership Act".

1.2 Intentions: Declarant is the owner of the real property set forth in paragraph 2.14 herein and intends to provide for condominium ownership of said real property.

1.3 Purpose: To accomplish this purpose, Declarant executes this Condominium Declaration for Evergreen Condominiums, to define the character, duration, rights, duties, obligations and limitations of condominium ownership in the project.

1.4 Declaration: Declarant hereby declares that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the project and shall be binding upon and accrue to the Declarant, its successors and assigns and any person acquiring and holding an interest in the project, their grantees, successors, heirs, personal representatives, executors, administrators or assigns.

2. DEFINITIONS. The following definitions shall apply in this Condominium Declaration and the exhibits attached hereto unless the context shall expressly provide otherwise:

2.1 ASSOCIATION means Evergreen Condominiums Association, its successors and assigns, the Bylaws of which govern the administration of the project.

2.2 BUILDINGS means the buildings constructed on the real property.

2.3 COMMON ELEMENTS means all of the project except the units.

2.4 COMMON EXPENSES means and include:

2.4.1 Expenses declared common expenses by provisions of this Condominium Declaration.

2.4.2 Expenses of administration, operation and management, maintenance, repair or replacement of the common elements.

2.4.2 Expenses of administration, operation and management, maintenance, repair or replacement of the common elements.

2.4.3 All sums lawfully assessed against the general common elements by the Board of Directors of the Association; and,

2.4.4 Expenses agreed upon as common expenses by the Association.

2.5 CONDOMINIUM MAP means the condominium map of Evergreen Condominiums filed December 27, 1979 and bearing reception number ~~337733~~ of the records of Gunnison County, Colorado.

2.6 CONDOMINIUM UNIT means a unit together with an undivided interest in the general common elements and the limited common elements appurtenant thereto.

2.7 DECLARANT means Partridge-Garland Associates, an Oklahoma partnership.

2.8 DECLARATION - CONDOMINIUM DECLARATION means this Declaration, and any and all duly executed amendments, supplements or additions to this Declaration.

2.9 GENERAL COMMON ELEMENTS means and includes all of the project except those portions thereof which constitute "Units" and shall also include:

2.9.1 The real property described in paragraph 2.14 hereof.

2.9.2 The foundations, columns, girders, beams and supports of the buildings.

2.9.3 The exterior walls of the buildings, the main or bearing walls within the buildings and the main or bearing sub-flooring and roofs of the buildings. All sidewalks, driveways, yards, gardens and automobile parking areas.

2.9.4 Any installations consisting of equipment and materials making up any central utility services.

2.9.5 In general, all apparatus and installations existing or provided for common use.

2.9.6 All other parts of the project, real property, and improvements necessary or convenient to its existence, maintenance and safety which are normal and reasonable in common use.

2.9.7 All personal property owned by the Association.

2.10 LIMITED COMMON ELEMENTS means any common element designated and reserved for the exclusive use by the owner of a particular condominium unit or units. Any balcony, terrace, porch, patio and storage area which is identified on the condominium map with the same designation by which a condominium unit is identified shall be a limited common element for the exclusive use of that unit or units.

2.11 MORTGAGE means any real estate mortgage, deed of trust, or a security instrument by which a condominium unit is encumbered.

2.12 OWNER means a person, firm, corporation, partnership, association, or other entity, or any number of combinations thereof, owning a condominium unit.

2.13 PROJECT means the real property and the building and all improvements and structures thereon, together with all rights, easements and appurtenances belonging thereto.

2.14 REAL PROPERTY means the following described real property situated in Guadalupe County, to wit:

The real property set forth on exhibit "A" attached hereto and incorporated herein by reference.

2.15 UNIT means an individual air space unit, consisting of enclosed rooms occupying part of the building and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space as said boundaries are shown on the Condominium Map, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a unit insofar as they are necessary for the support or full use and enjoyment of another unit; bearing walls, floors, ceilings, and roofs except the interior surfaces thereof, foundations, space heating equipment and central water heating equipment, if any, tanks, pumps, pipes, vents, ducts, shafts, flues, chimneys, conduits, wires and other utility installations, except the outlets thereof when located within the unit. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

3. ESTABLISHMENT OF CONDOMINIUM OWNERSHIP. The project is hereby divided into 18 condominium units as follows:

3.1 16 fee simple estates consisting of 16 separately designated condominium units, together with an undivided fractional interest in the general common elements, appurtenant to each unit, and any limited common elements appurtenant to each unit, as set forth on attached exhibit "A", and incorporated herein by reference.

3.2 2 fee simple estates consisting of 2 separately designated commercial units, together with an undivided fractional interest in the general common elements, appurtenant to each unit, as set forth on attached exhibit "B", and incorporated herein by reference.

3.3 Subject to the limitations herein contained, any owner shall have the non-exclusive right to use and enjoy the general common elements and shall have the exclusive right to use and enjoy any limited common elements which may be designated for the condominium unit.

4. INSEPARABILITY OF A CONDOMINIUM UNIT.

4.1 Each condominium unit and the undivided fractional interest in the general and limited common elements and the easements appurtenant thereto shall together comprise one condominium unit which shall be inseparable and may be conveyed, leased, devised or encumbered only as a unit.

5. CONDOMINIUM MAP.

5.1 The Condominium Map shall be filed for record prior to the first conveyance of a condominium unit. Such map shall consist of and set forth the following:

5.1.1 The legal description of the real property.

5.1.2 The linear measurements and locations, with reference to the exterior boundaries of the land, of the buildings and all other improvements built or to be built on said real property.

5.1.3 The elevation plans of the buildings.

5.1.4 The elevations of the unfinished interior surfaces of the floors and ceilings as established on a datum plane, the linear measurements showing the thickness of the perimeter walls of the buildings, the bearing walls to the buildings and the perimeter walls of each unit.

5.1.5 The floor plans which shall depict the boundaries (perimeter of the condominium units,) the unit designations and the linear measurements of each unit.

5.1.6 The appropriate designation and identification of all general common elements and limited common elements.

5.2 As a part of the condominium map, there shall be filed for record a certificate of a registered land surveyor of the State of Colorado, certifying that the improvements as constructed conform substantially to the Map, and that the Map fully and accurately depicts the layout, measurements and location of all of the improvements on the real property; the condominium unit designations, the dimensions of such units and the elevations of the unfinished floors and ceilings.

5.3 In interpreting the Condominium Map or any part thereof, the existing physical boundaries of the units shall be conclusively presumed to be its boundaries.

6. DESCRIPTION OF CONDOMINIUM UNIT.

6.1 Every instrument affecting the title to a condominium unit may describe that condominium unit by its identifying unit number followed by the words "Evergreen Condominiums" with appropriate reference to the condominium map and this declaration.

6.2 Such method of description for a condominium unit shall be as follows:

Condominium Unit \_\_\_\_\_, Evergreen Condominiums according to the Condominium Map thereof and the Condominium Declaration pertaining thereto recorded in Book \_\_\_\_\_ at page \_\_\_\_\_ of the records of Gunnison County, Colorado.

7. TITLE. A condominium unit may be held and owned by more than one owner as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado. Declaration or by operation of law.

8. TERM OF OWNERSHIP. The separate estate of an owner to a condominium unit as herein created shall continue until revoked in the manner contained in this Condominium Declaration or by operation of law.

9. PARTITION NOT PERMITTED. The general common elements shall remain undivided and shall be owned in common by all of the owners of the condominium units and no owner may bring any action for partition or division of the general common elements. No unit shall be partitioned.

10. USE OF GENERAL COMMON ELEMENTS AND LIMITED COMMON ELEMENTS. Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general and limited common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

11. USE AND OCCUPANCY. The units in the project shall be used and occupied as follows:

11.1 Residential units shall be used solely for residential purposes by the owner, his family, guests, invitees and tenants.

11.2 Business units shall be used solely for business and commercial purposes by the owner, its invitees, tenants and lessees. All business and commercial uses shall be in accordance with the then applicable zoning ordinance of the Town of Mt. Crested Butte, Colorado, pertaining thereto.

11.3 Such use and occupancy shall be subject to the provisions contained herein.

12. EASEMENTS FOR ENCRoACHMENTS. If any portion of the general common elements encroaches or hereafter encroaches upon a unit or units, a valid easement for the encroachment and the maintenance for the same, so long as it exists, shall and does exist. If any portion of a unit encroaches upon the general common element, or upon an adjoining unit or units, a valid easement for the encroachment shall and does exist. Such encroachments shall not be considered or determined to be encroachments either on the common elements or the units.

13. RESERVATION FOR ACCESS - MAINTENANCE, REPAIR AND EMERGENCIES.

13.1 The owner of a unit shall have the irrevocable right, to be exercised by the Association, its officers, agents and employees, to have access to each unit and all common elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit.

13.2 Damage to the interior or any part of a unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the common elements or as a result of an emergency repair within another unit at the instance of the Association, or of other owners, shall be an expense of all of the owners;

provided, however, that if such damage is the result of the negligence of the owner of the unit, then such owner shall be responsible for all such damages. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

14. SEPARATE ASSESSMENTS AND TAXATION - NOTICE TO ASSESSOR. Declarant shall give written notice to the Assessor of the County of Gunnison, Colorado, of the creation of condominium ownership of this project, as provided by the Condominium Ownership Act of the State of Colorado as follows:

Condominium Unit - Each condominium unit, together with its undivided fractional interest in the common elements appurtenant thereto shall be deemed a separate parcel and subject to separate assessment and taxation.

15. ASSESSMENTS AND TAXATION. Each condominium unit shall be separately assessed for all taxes and assessments of the State of Colorado, the County of Gunnison or any other political subdivision or district having authority to tax. For the purpose of such assessment, the valuation of the general common elements shall be apportioned among the units in proportion to the fractional interest in the general common elements appurtenant to such units.

16. ASSOCIATION AS ATTORNEY-IN-FACT. This Declaration does hereby make mandatory and does constitute the irrevocable appointment of the Association as Attorney-in-fact for the owner of every condominium unit for all purposes with respect to the project upon its damage, destruction or obsolescence.

17. AUTHORITY OF ASSOCIATION.

17.1 The title to any condominium unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or any prior owner shall constitute the appointment of the Association as the owner's Attorney-in-fact.

17.2 The Association, as Attorney-in-fact, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other document with respect to the interest of the owner of a condominium unit which may be necessary and appropriate to exercise the powers herein granted.

17.3 Repair and reconstruction of the improvements as used in the succeeding paragraphs means restoring the improvements to substantially the same condition in which the same existed prior to the damage, with each unit and common elements having substantially the same vertical and horizontal boundaries as before.

17.4 The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless the owners and the holders of all first mortgages agree not to rebuild in accordance with the provisions hereafter set forth.

18. ADMINISTRATION AND MANAGEMENT.

18.1 The administration and management of this project shall be governed by the Articles of Incorporation

and the Bylaws of the Evergreen Condominiums Association, herein referred to as the "Association".

18.2 The owner of a condominium unit, upon becoming such owner, shall be entitled and required to be a member of the Association and shall remain a member for the period of his ownership.

18.3 There shall be one membership in the Association for each condominium unit. That membership shall be appurtenant to the condominium unit and shall be transferred automatically by a conveyance of that condominium unit to the new owner.

18.4 Each membership in the Association shall be entitled to cast a vote in accordance with the percentage ownership of the general common elements appurtenant to that Condominium unit as is provided in exhibit "A" to this Condominium Declaration.

18.5 No person other than an owner may be a member of the Association and a membership may not be transferred except in connection with the conveyance or transfer of the condominium unit; provided however, that such membership may be assigned to the holder of a mortgage as further security for the loan secured by the lien of the mortgage holder upon the condominium unit.

19. OWNERS' MAINTENANCE RESPONSIBILITY OF UNIT.

19.1 The owner of a condominium unit shall keep and maintain the interior of his unit, including, but without limitation, the interior walls, ceilings, floors, windows, glass and all permanent fixtures and appurtenances thereto in a good and proper state of repair in a clean, sanitary and attractive condition.

19.2 The owner shall not be deemed to own any utilities running through his unit which serve one or more other units except as tenants in common with the other owners. No utilities shall be altered, changed, relocated or disturbed without the prior written consent of the Association.

19.3 Such right to repair, alter and remodel shall carry the obligation to replace any finished materials removed with similar or other types or kinds of finishing materials.

19.4 All fixtures and equipment installed within the unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are referred to as "utilities") enter the unit shall be maintained and kept in repair by the owner thereof.

19.5 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 utility.

20. COMPLIANCE WITH PROVISIONS OF DECLARATION, BYLAWS OF THE ASSOCIATION. Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto and 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 and for damages or injunctive relief or both, together with reasonable attorneys' fees and costs, by the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

21. REVOCATION OR AMENDMENT OF DECLARATION. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of seventy-five percent (75%) or more, of the general common elements, and all of the holders of any recorded first mortgage covering or affecting any or all units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded in Gunnison County, Colorado, provided, however that the percentage of the undivided interest in the general common elements appurtenant to each unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded in Gunnison County, Colorado.

22. ASSESSMENT FOR COMMON EXPENSES. The Declarant for each condominium unit owned by it and each owner of a condominium unit by the acceptance of a deed therefor, shall be deemed to covenant and agree and shall be obligated to pay to the Association all assessments made by the Association for the purposes provided in this Declaration.

23. APPORTIONMENT OF ASSESSMENTS FOR COMMON EXPENSES. The assessments and expenses pertaining to the common elements and to the project as a whole shall be apportioned among all owners, in accordance with their ownership interest in the general common elements. The limited common elements shall be maintained as general common elements and the owners having exclusive use thereof shall not be subject to any separate charge or assessment therefore.

24. AMOUNT OF ASSESSMENTS FOR COMMON EXPENSES.

24.1 The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the common elements, which sums may include, among other things, expenses of management, taxes and special assessments until the condominium units are separately assessed, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, trash collection, water and sewer charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the owners.

24.2 The omission or failure of the Association to fix such assessment for any period shall not be deemed a waiver, modification or release of the owners from their obligation to pay the same.

24.3 In the event that the Association fails to pay any service charges imposed by a district providing services to it, each owner shall be personally responsible and liable for the required payments to such district, and the fact that the owner has already paid the Association therefore shall not exempt the owner from liability.



25. TIME OF PAYMENTS OF ASSESSMENTS FOR COMMON EXPENSES.

25.1 The assessments of the Association shall be computed and determined on a fiscal year basis.

25.2 Assessments shall be payable monthly in advance on or before the tenth day of each month by the owners of the units.

25.3 The Association shall give written notice to the owners of the units of the annual assessment and shall further prepare and deliver to each owner itemized monthly statements as to the monthly assessment.

25.4 The Association may provide that any assessment shall bear interest at a rate to be determined by the Association if not paid on the due date thereof.

26. LIEN FOR NON-PAYMENT OF COMMON EXPENSES.

26.1 All sums assessed to any condominium unit and not paid within 30 days from the date of assessment, together with interest thereon as herein provided, shall constitute a lien on such condominium unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such condominium unit except only:

26.1.1 Tax and assessment liens on the condominium unit or by any governmental authority.

26.1.2 All sums unpaid on a first mortgage of record, including all unpaid obligatory advances made pursuant to such mortgage.

26.2 To evidence such lien, the Association, by the board of directors, officers or manager may prepare a written notice of lien setting forth the amount of the assessment, the amount remaining unpaid, the name of the owner of the condominium unit and a description thereof. Such notice shall be signed by the Association and may be recorded in the records of Gunnison County, Colorado. Such lien shall attach from the date of the failure of payment of the assessment and shall continue as a lien until all sums with interest and other charges thereon have been fully paid, and such lien shall not be extinguished nor annulled by foreclosure of any other lien.

26.3 Such lien may be enforced by foreclosure by the Association in the same manner as a foreclosure of a mortgage. In such foreclosure, the owner shall be required to pay the costs and expenses for such proceedings, the cost and expenses for filing the notice of claim of lien and all reasonable attorneys' fees. The owner shall also be required to pay to the Association the monthly assessments for the 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 unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

26.4 Any encumbrancer holding a lien on a condominium unit may pay, but shall not be required to pay, the amount secured by such lien, and upon such payment

said encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of its encumbrance.

26.5 The Association shall report to any encumbrancer of a condominium unit any unpaid assessments remaining unpaid for more than 30 days after the date of assessment, provided that such encumbrancer shall have made written request therefor.

27. OWNERS' OBLIGATION FOR PAYMENT OF ASSESSMENTS.  
The amount of the common expenses assessed against each condominium unit shall be the personal and individual debt of the owner or owners thereof at the time the assessment is made. Suit to recover a money judgment for such unpaid debt shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No owner may exempt himself from the 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.

28. STATEMENT OF ACCOUNT.

28.1 Upon payment of a reasonable fee, not to exceed twenty dollars, and upon the written request of any owner, prospective owner, holder of a mortgage of a condominium unit, the Association shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessments become due, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement shall be complied with within twenty days of such request, then such requesting party shall not be liable for, nor shall the unit be conveyed subject to a lien for any unpaid assessments against the subject unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the unit by the Declarant.

28.2 The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for 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 therefore.

29. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION.

29.1 Subsequent to the completion of the improvements described on the Condominium Map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit of another owner not expressly consenting to or requesting the same, or against the general common elements, except as to the undivided fractional interest therein appurtenant to the unit of the owner for whom such labor shall have been performed and such materials shall have been furnished. The provisions herein contained are subject to the rights of the Association, as set forth herein.

29.2 Each owner shall indemnify and hold harmless each of the other owners from and against liability or loss arising from the claim of any lien against the condominium unit or any part thereof, of any other owner for labor performed, or for materials furnished in work on the first owner's unit. At the written request of any owner, the Association shall enforce such indemnity by collecting from the owner of the unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment.

30. MORTGAGING A UNIT - PRIORITY. Any owner shall have the right from time to time to mortgage or encumber his interest in a condominium unit by mortgage. A first mortgage shall be one which has first and paramount priority under applicable law and a mortgage imposed against the condominium unit by virtue of the first sale of such unit by the Declarant shall be construed and presumed to be a first mortgage. The owner of a condominium unit may create junior mortgages on the following conditions:

30.1 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, the Articles of Incorporation and Bylaws of the Association.

30.2 That the holder of any junior mortgage shall release, for the purpose of restoration of any improvements upon the project, all of his right, title and interest in and to the proceeds under insurance policies upon said project wherein the Association is named insured. Such release shall be furnished upon written request by the Association.

31. INSURANCE:

31.1 The Association shall obtain and at all times maintain and keep in full force and effect insurance of the type and kind provided for herein and including such other insurance coverage for risks of a similar or dissimilar nature as are or shall hereafter become customary coverage with respect to a condominium project. Such insurance shall include:

31.1.1 Insurance on the project in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which an owner of a similar building in the vicinity of the project would in the exercise of prudent judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Association, 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 coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

31.1.2. Broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the project.

31.1.3 Insurance against such other risks, of a similar or dissimilar nature, as the Association shall deem appropriate with respect to the project including any personal property of the Association located thereon.

31.2 The insurance shall be written by insurance companies duly authorized and licensed to do business in the State of Colorado.

31.3 The insurance shall be issued and carried in a policy naming the Association as the named insured as Attorney-in-Fact for the owners of the condominium unit. All insurance policies shall identify the interest of each owner of a condominium unit and shall provide a standard non-contributor mortgagee clause in favor of each first mortgage holder.

31.4 All policies of insurance shall provide that the same cannot be cancelled by either the insured or the insurance company until after ten days prior written notice is first given to each owner and each first mortgage holder.

31.5 The Association shall furnish to each owner a true copy of such policies together with a certificate identifying the interest of the owner and the first mortgage holder, if any.

31.6 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 such policy as to the interest of all other insured owners not guilty of such act or omission shall not be in full force and effect.

31.7 All policies of insurance shall contain a waiver of subrogation as to any claims against the Association, its directors, officers, employees and agents and against any other owner or such owner's employees, agents and guests and shall further contain a waiver as to any "co-insurance" or "no other insurance" clause in said policies as to any policies of insurance maintained by any owner or mortgagee.

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

31.9 A determination of the maximum replacement value of all condominium units for insurance purposes shall be made annually by one or more written appraisals for insurance purposes, copies of which shall be furnished immediately to each first mortgage holder of a condominium unit. In addition, each owner shall be notified of such appraisal. Such appraisal shall be by an MAI or SRA appraiser or by an appraiser of equivalent training or qualifications.

31.10 Any insurance policy obtained by an owner shall contain a standard waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents, employees and members and against other owners of condominium units, their employees, agents and guests and such policy will provide that it will not adversely affect or diminish or invalidate any insurance or the right to recover any insurance proceeds obtained by and carried by the Association.

31.11 In the event of any loss, damage or destruction against which such insurance is obtained, notice of such loss, damage or destruction and the amount of payment therefore under said policies of insurance shall be given to the first mortgage holders, if any.

32. REPAIR AND RESTORATION: In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, 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.

33. INSURANCE PROCEEDS INSUFFICIENT:

33.1 If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than one (1) building or more than six individual units, not including real property, such damage or destruction shall be promptly repaired and reconstructed by the Association, as Attorney-in-fact, using the proceeds of the insurance and the proceeds of an assessment to be made against all of the owners and their condominium units.

33.2 Such deficiency assessment shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as Attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment.

33.3 The assessment provided for herein shall be a debt to each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraphs 26 and 27.

33.4 In addition thereto, the Association, as Attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the 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:

33.4.1 For payment of the balance of the lien of any first mortgage;

33.4.2 For payment of taxes and special assessment liens in favor of any governmental authority;

33.4.3 For payment of unpaid common expenses and assessments of the Association including any deficiency assessments and all costs and fees incurred to collect same;

33.4.4 For payment of junior liens and encumbrances in the order of and to the extent of their priority;

33.4.5 The balance remaining, if any shall be paid to the owner.

34. DECISION NOT TO RE-BUILD:

34.1 If more than one (1) building or more than six units, not including real property, is destroyed or damaged, does not voluntarily, within one hundred days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every holder of a first mortgage, the Association shall forthwith record a notice setting forth the fact or facts, and upon the recording of such notice by the Association, the remaining project 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 Articles of Incorporation and Bylaws of the Association.

34.2 The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the condominium units. Each account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the owner. From each separate account the Association, as Attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the unit represented by such separate account.

34.3 Thereafter, each such account shall be supplemented by the appropriate amount of the proceeds derived from the sale of the project. Such apportionment shall be based upon each 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 paragraph 33.4.1 through 5.

35. PLAN OF RECONSTRUCTION:

35.1 If the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of the holders of all first mortgages, then all the owners shall be bound by the terms and other provisions of such plan.

35.2 Assessments 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 full authority, right and power, as Attorney-in-fact, 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.

35.3 The assessment provided for herein shall be a debt of each owner and a lien on his unit and may be enforced and collected as is provided in paragraphs 26 and 27.

35.4 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 the sale of such unit shall be used and disbursed by the Association, as Attorney-in-fact, for the same purposes and in the same order as is provided in paragraph 33.4.1 through 5.

36. ADOPTION OF OBsolescence PLAN:

36.1 The owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements may agree that the condominium units are obsolete and adopt a plan for the renewal and reconstruction of the project, which plan shall have the unanimous approval of all holders of first mortgages.

36.2 If a plan for the renewal or reconstruction is adopted, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such a plan for renewal or reconstruction may give written notice to the Association that such condominium unit shall be purchased by the association for the fair and reasonable market value thereof. The Association shall then have fifteen days within which to cancel such plan. If such plan is not cancelled, then the condominium unit shall

be purchased according to the following procedures. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within sixty days thereafter.

36.3 If the owner or the Association is unable to agree as to the determination of the fair and reasonable market value of the condominium unit the same shall be submitted to arbitration in accordance with Rule 109 Colorado Rules of Civil Procedure as now in effect or as may hereafter be amended.

36.4 The Board of Arbitration shall be appointed in the following manner:

36.4.1 Within ten days after the failure to agree on the fair and reasonable value, the owner shall nominate and appoint in writing, with written notice to the Association, his arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.

36.4.2 Within ten days after the failure to agree on the fair and reasonable value, the Association shall nominate and appoint in writing, with written notice to the owner, his arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.

36.4.3 Within ten days after the appointment, the arbitrator for the owner and the arbitrator for the Association shall jointly nominate and appoint a third arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.

36.4.4 If the owner fails to nominate and appoint his arbitrator within the time limit above provided or if the Association shall fail to nominate and appoint its arbitrator within the time herein provided or if the arbitrators appointed then and in that event the arbitrator or arbitrators not so nominated and appointed shall be nominated and appointed by a judge of the District Court of Gunnison County, Colorado, upon the application of this party or parties that have properly nominated and appointed their arbitrator.

36.5 The decision of a majority of the Board of Arbitrators shall be the decision of the Board of Arbitrators as to the fair and reasonable market value of the condominium unit.

36.6 The Board of arbitrators shall render its decision in writing within 30 days from the date the Board of Arbitrators is constituted.

36.7 The owner and the Association agree that they shall be bound and will abide by said decision and that said decision and award may be filed with the Clerk of the District Court of Gunnison County, Colorado, as the basis of a judgment.



36.8 In the event that there are not sufficient licensed real estate brokers in Gunnison County, Colorado, to provide the necessary appraisers and nominees herein set forth, then licensed real estate salesmen of the State of Colorado, residing in Gunnison County, Colorado, may be used.

36.9 The sale shall be consummated within fifteen days thereafter, and the Association, as Attorney-in-fact, shall disburse such proceeds as provided in paragraph 33.4.1 through 5.

37. SALE UPON OBSCOLESCENCE:

37.1 The owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements may agree that the units are obsolete and that the same should be sold. Such plan must have the unanimous approval of every holder of a first mortgage.

37.2 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 the entire project 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 Articles of Incorporation and Bylaws of the Association.

37.3 The sale proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one unit. Each such account shall be in the name of the Association, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account, the Association as Attorney-in-fact, shall use and disburse the total of such accounts, without contribution from one account to the other, for the same purposes and in the same order as provided in paragraph 33.4.1 through 5.

38. PROPERTY FOR COMMON USE:

38.1 The Association may acquire and hold for the use and benefit of all of the owners, real and personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the owners in the same proportion as their respective interests in the general common elements and shall not be transferable except with a transfer of a condominium unit.

39. REGISTRATION BY OWNER OF MAILING ADDRESS:

39.1 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 Association shall be sent by certified mail, postage prepaid, to the address of the Association as designated in the Articles of Incorporation and Bylaws of the Association.

39.2 All notices or demands intended to be served shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address.

40. RULES AND REGULATIONS: The Association may make reasonable rules and regulations governing the use of units and of the common elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations shall be binding upon all owners and the Association may take such action, including judicial action as may be necessary to enforce compliance with such rules and regulations and to obtain damages and reasonable attorneys' fees for non-compliance to the extent permitted by law.

41. ADDITIONAL RIGHTS OF HOLDERS OF FIRST MORTGAGE: In addition to any other rights provided in this condominium declaration any first mortgage holder, who shall make a request in writing to the Association, shall have the following additional rights:

41.1 To be furnished a copy of the annual financial statement and audit of the Association. Such statement to be furnished at the time the same is furnished to the owners.

41.2 To be given written notice by the Association of any meeting of the Association called for the purpose of considering any amendment, revocation or change to the Condominium Declarations or Articles of Incorporation of the Association. Such notice shall state the nature of any such change being proposed.

41.3 To be given written notice of any default by an owner of a unit encumbered by the first mortgagee in the performance of any duty or obligation required hereunder, if the same is not cured within thirty (30) days.

41.4 Upon reasonable notice to examine the books and records of the Association during normal business hours.

42. RESERVATIONS BY DECLARANT: Notwithstanding any other provisions expressed or implied in this Declaration or the Articles of Incorporation and Bylaws of the Association, the Declarant specifically reserves unto itself, its successors and assigns the following rights:

42.1 To elect and appoint the board of directors of the Association and to appoint the managing agent until ninety percent (90%) of the condominium units have been sold and conveyed by the Declarant or for a period of three (3) years after the first sale and conveyance of a condominium unit, whichever occurs later in time.

42.2 During the period of development and until the sale of a condominium unit the monthly assessments to the Declarant on such units may be based upon the actual cost required to maintain said unit and shall not include any amounts necessary for contingencies, reserves or other funds not needed in the day-by-day operation of the unit.

43. RESERVATION TO ENLARGE AND SUPPLEMENT CONDOMINIUM PROJECT:

43.1 Notwithstanding any other provisions expressed or implied in this declaration or the Articles of Incorporation and Bylaws of the Association, the Declarant specifically reserves unto itself, its successors and assigns the right to expand the condominium units set forth in paragraph 13 of this Declaration. Such buildings shall be located on the real property set forth on exhibit "C" attached hereto and incorporated herein by reference. The total number of units in the Project, as enlarged, shall not exceed sixty.

43.2 Such enlargement may be accomplished by filing for record in the office of the Clerk and Recorder of Gunnison County, Colorado, not later than fifteen years from the date of this Declaration, a supplement or supplements to this Declaration containing a legal description of the site or sites for the new building or buildings, together with a supplemental condominium map containing the same information with respect to the new building or buildings as was required on the original condominium map with respect to the original buildings, or by such other method as may be required under the laws of the State of Colorado. The enlargement may be accomplished in stages by successive amendments.

43.3 In the event of such enlargement, the definitions used in this Declaration automatically shall be enlarged to encompass and refer to the Project as so enlarged. Thus, for example, Real Property shall mean the real property described in exhibit "A" attached hereto plus any additional real property added by a supplemental declaration or by supplemental declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of condominium units after such enlargement shall be effective to transfer rights in the Project as enlarged, by use of the form or description set forth in Paragraph 6 hereof, with additional references to the supplemental declaration and the supplemental condominium map.

43.4 The recording in the office of the Clerk and Recorder of Gunnison County, Colorado of a supplemental condominium map and supplemental condominium declaration incident to any enlargement shall operate automatically to grant, transfer and convey to all owners of condominium units in the entire Project, both as originally included under this Declaration and as enlarged, those undivided fractional interests in all common elements of the entire Project as shall be set forth in said supplemental condominium declaration. The revision of the undivided fractional interest in the common elements appurtenant of each unit, when revised by the filing of such supplemental condominium declaration, shall not be deemed an amendment or revocation of this Declaration or any previously executed and recorded supplemental declaration within the meaning of paragraph 21 thereof. Such recording

shall also operate to vest in any then mortgagee of any condominium unit in the Project as it existed before such enlargement a security interest in the undivided interest so acquired by the new owner of the condominium unit encumbering the new common elements added to the Project as a result of such enlargement.

43.5 Any such new building or buildings shall be subject to all the terms and conditions of this Declaration and of such supplemental declaration or declarations, and the condominium units therein shall be subject to condominium ownership with all the incident pertaining thereto as specified herein, upon placing the supplemental condominium map or maps and supplemental condominium declaration or declarations of record in the office of the Clerk and Recorder of Gunnison County, Colorado.

43.6 The appurtenant undivided interests of all owners in the common elements, whether under the original buildings included in the Project, or as expanded, shall be the numerator, and the denominator of which shall be the total number of condominium units within the then existing Project as set forth in this Declaration and any supplemental declaration or declarations so recorded.

44. EMPLOYER HOUSING. Residential units "B" and "D" are hereby set aside and dedicated as employee housing under the following conditions:

44.1 Such units shall be set aside and used solely for the purpose of housing employees whose services are utilized in the operation and management of Evergreen Condominiums and to the extent that such units are not utilized by such employees, to any other persons employed within the Town of Mt. Crested Butte, Colorado.

44.2 Such units are set aside solely for the purpose of such employee housing, so long as the same are (1) needed to house employees of the Evergreen Condominium project as determined by the Association and (2) are required to be kept and maintained as employee housing by any ordinance of the Town of Mt. Crested Butte, Colorado, including Ordinance 10, Series 1979.

44.3 The Declarant, or its successor in interest, shall keep and maintain the units for such employee housing, shall be entitled to determine the reasonable rent and occupancy thereof, receive all rental income and shall be responsible for all assessments levied against such units until the happening of the condition set forth in subparagraph 44.4.

44.4 Upon the completion of the entire condominium project of Evergreen Condominiums including the construction of additional condominium units on the property set forth on attached exhibit "C", Declarant shall offer the said employee housing units for sale to the Evergreen Condominiums Association at Declarant's cost (being the total construction cost of the units, without depreciation) and the Association shall be required to purchase the same in cash on the date of closing.

45. GENERAL:

45.1 If any of the provisions of this Declaration of any paragraph, sentence, clause, phrase or word or

the application thereof in any circumstances 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.

45.2 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.

45.3 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.

45.4 Any and all sums, amounts, expenses, assessments or any funds due and payable as provided in this Declaration which are not paid within thirty (30) days of the date that the same are due and payable shall bear interest at the rate of one percent per month from the date that the same were first due and payable to the date until paid, unless any other rate of interest is specified.

46. APPLICABLE LAW. This Declaration is filed in the records of Gunnison County, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Declaration shall be in the District Court of Gunnison County, Colorado.

47. ATTORNEYS' FEES. It is agreed that if any action is brought in a court of law by either party to this Agreement as to the enforcement, interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

48. BINDING AGREEMENT. It is understood and agreed that this Declaration shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF, the Declarants have executed this Declaration this 26 day of December, 1979.

PATRIDGE-GARLAND ASSOCIATES,  
an Oklahoma partnership

By Rud F. Garland  
Rud F. Garland, Partner

STATE OF COLORADO            )  
  ) ss  
County of Gunnison         )

The above and foregoing Condominium Declaration was acknowledged before me by Rud F. Garland, partner of Partridge-Garland Associates, an Oklahoma partnership, the 26<sup>th</sup> day of December, 1979.

My commission expires: June 3, 1983  
Witness my hand and official seal.



Robert E. Wright  
Notary Public

## EXHIBIT "A"

A parcel of land being part of Lodge Site No. 11 of the Replat of Northern Lodge Sites, Town of Mt. Crested Butte, Gunnison County, Colorado, described as follows:

Beginning at the most northwesterly corner of said Lodge Site No. 11, thence South  $35^{\circ}26'$  East along the southwesterly boundary of said Lodge Site No. 11 a distance of 249.30 feet; thence North  $51^{\circ}02'25''$  East 215.92 feet to the northeasterly boundary of said Lodge Site No. 11; thence North  $34^{\circ}29'$  West along said northeasterly boundary 83.78 feet to the most northeasterly corner of said Lodge Site No. 11; thence South  $85^{\circ}38'$  West 265.0 feet to the point of beginning, containing 0.027 acres.

## EXHIBIT "B"

<u>Unit Number</u>	<u>Undivided Fractional Interest</u>
1	1/18th fractional interest
2	1/18th fractional interest
3	1/18th fractional interest
4	1/18th fractional interest
5	1/18th fractional interest
6	1/18th fractional interest
7	1/18th fractional interest
8	1/18th fractional interest
9	1/18th fractional interest
10	1/18th fractional interest
11	1/16th fractional interest
12	1/18th fractional interest
A	1/18th fractional interest
B	1/18th fractional interest
C	1/18th fractional interest
D	1/18th fractional interest
C-1	1/18th fractional interest
C-2	1/18th fractional interest

EXHIBIT "C"

That portion of Lodge Site No. 11, Replat of Northern Lodge Sites, Town of Mt. Crested Butte, Gunnison County, Colorado, except only that portion set forth on attached exhibit "A".

That portion of Lodge Site No. 10, LODGE SITES AREA, described as follows:

Beginning at the northernmost corner of Lodge Site No. 10, LODGE SITES AREA; thence South  $60^{\circ}29'$  East along the boundary of said Lodge Site No. 10, a distance of 160.00 feet; thence South  $46^{\circ}47'17''$  West a distance of 279.67 feet to a point on the West boundary of said Lodge Site No. 10; thence North  $19^{\circ}11'$  West, along said West boundary, a distance of 160.00 feet; thence North  $44^{\circ}30'$  East along the North boundary of said Lodge Site No. 10, a distance of 166.55 feet, to the point of beginning,