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County of Jefferson State of Co.

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## CONDOMINIUM DECLARATION

OF

## INDEPENDENCE SQUARE CONDOMINIUMS

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, ISC Joint Venture, hereinafter referred to as "Declarant", are the owners of the real property situated in the County of Jefferson, State of Colorado, more particularly described as Exhibit A hereto; (hereinafter referred to as the "Real Property"); and

WHEREAS, there presently exists on said real property a forty-one unit rental apartment complex; which improvements are commonly known as 4619-4699 Independence Street; and

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

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

NOW, THEREFORE, Declarant does hereby publish and declare that the Real Property, Buildings, and Improvements constructed and located thereon, are hereby submitted and dedicated to Condominium use and ownership as set forth herein and the following terms, covenants, conditions, easements, and restrictions, uses, limitations, and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, their successors and assigns and any person acquiring or owning an interest in the Real Property and Improvements, their grantees, successors, heirs, executors, administrators, devisees, or assigns.

1. Definitions:

(A) "Unit" means an individual air space which is contained within the windows, doors (in their closed position) and the unfinished perimeter walls, floors (or lower most floors, if it is an individual air space Unit containing more than one level) and ceilings (or the upper most ceilings, if it is an individual air space Unit containing more than one level) of each Unit shown on the Condominium Map to be filed for record, together with all fixtures and improvements

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therein contained, but not including any structural components of the building or other portions of the common elements, if any, located within the Unit.

(B) "Building" means one of the building improvements containing Units as shown on the map.

(C) "Condominium Unit" means the fee simple interest in title in and to a Unit, together with the individual interest in the general common elements appurtenant to such Unit, and all other rights and burdens created by this Declaration.

(D) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more Condominium Units but excluding, however, any such person having an interest therein merely as a mortgagee (unless such mortgagee has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

(E) "General Common Elements" means and includes the land described in Exhibit A; the structural components of the buildings, including, but not limited to the foundations, girders, beams, supports, roof and main wall; the yards, gardens, non-designated parking and storage spaces, the premises, if any, for the lodging of custodians or persons in charge of the property; installation of central services, such as power, light, gas, hot and cold water, heating and air conditioning, the service roads, if any; the improvements and portions of the buildings and areas therein as are provided for the community use, recreation, utility and common use of all owners; and all other parts of such land and improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in general common use, uncluding the air above such land. The general common elements shall be owned, as tenants in common, by the owners of the separate Units, each owner of a Unit having an undivided fractional interest in such general common elements as is hereinafter provided.

(F) "Limited Common Elements" means those parts of the general common elements which are either limited to and reserved for the exclusive use of an owner of a Condominium Unit or are limited to and reserved for the common use of more than one but fewer than all of the Condominium Unit owners, which shall include by way of illustration and not limitation, patios, storage areas and certain parking spaces, which are specifically designated as being appurtenant to particular Units.

(G) "Entire Premises or Property" means and includes the land, the buildings, all improvements and structures thereon and all rights, easements and appurtenances belonging thereto.

(H) "Common Expenses" means and includes (i) expenses of administration, or of operation and of management, of repair or replacement of the general and limited common elements; (ii) expenses declared common expenses by the Association; (iii) all sums lawfully assessed against the general and limited common elements by the Board of Managers of the Association; and (iv) expenses agreed upon as common expenses by the Association of Unit Owners.

(I) "Association of Unit Owners" or "Association" means Independence Square Condominium Owners Association, a Colorado Corporation, not for profit, the By-Laws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the Condominium Units in the entire premises.

(J) "Map", "Condominium Map" or "Supplemental Map" means and includes the engineering survey of the land depicting and locating thereon all of the improvements; the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements and land which are included in this condominium project.

(K) "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Condominium Unit as security for the payment of a debt or obligation.

(L) "Mortgagee" shall mean any person, corporation, partnership, trust, company, association or other legal entity which takes, owns, holds or receives a mortgage.

2. Limited Common Elements:

Subject to the definition thereof, the limited common elements shall be identified on the Map. Any balcony, porch or patio which is accessible from, associated with and which adjoin(s) a Unit shall, without further reference thereto be used in connection with such Unit to the exclusion of the use thereof by the other owners of the general common elements, except by invitation and shall be designated a limited common element. All of the owners of the Condominium Units in this condominium project shall have a non-exclusive right in common with all of the other owners to use of sidewalks, recreational facilities, streets and drives located within the entire condominium project.

In addition to rights of use herein described and elsewhere described in this Declaration, the Association, its Board of Managers and its Managing Agent shall have the unrestricted irrevocable easement to traverse, cross and utilize any portion of the general common elements

which may be necessary in order to maintain, repair or replace general and/or limited common elements. Except as specifically hereinabove required, no reference thereto, whether such limited common elements are exclusive or non-exclusive, need be made in any instrument of conveyance or other instrument in accordance with paragraph 6 of this Declaration.

**3. Division of Property Into Condominium Units:**

The real property described on Exhibit A including the improvements thereon is hereby divided into 41 fee simple estates (Condominium Units). Each such estate shall consist of a separately designated Unit and the undivided interest in and to the general common elements appurtenant to such unit as set forth on Exhibit B attached hereto and incorporated by reference herein.

**4. Inseparability of a Condominium Unit:**

Each Unit and the undivided interest in the general and limited common elements appurtenant thereto shall be inseparable and may be conveyed, leased, rented or encumbered only as a Condominium Unit.

**5. 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. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the general common elements and each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this Paragraph 5 may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. Further, all owners, and the Association, covenant that they shall neither by act or omission, seek to abandon, subdivide, encumber, sell or transfer the general common elements without first obtaining the written consent of at least seventy-five (75%) percent of the first mortgagees of the individual Condominium Units. Each such first mortgagee shall have one vote for each mortgage owned by it. Any such action without the written consent of said mortgagees shall be null and void.

**6. Description of Condominium Unit:**

(a) Every contract for the sale of a Condominium Unit written prior to the recordation of the Map and this Declaration may legally describe a Condominium Unit by its identifying Unit designation, followed by the words "Independence Square Condominiums". The location of such Condominium Unit shall be depicted on the Map subsequently recorded. Upon recordation of the Condominium Map in the County of

Jefferson, Colorado, such description shall be conclusively presumed to relate to the thereon described Condominium Units.

(b) After the Condominium Map and this Declaration have been recorded in the Office of the County Clerk and Recorder of Jefferson County, Colorado, every contract, deed, lease, mortgage, trust deed, will or other instrument shall legally describe a Condominium Unit as follows:

Condominium Unit No. \_\_\_\_\_, Building No. \_\_\_\_\_, Independence Square Condominiums, a Condominium in accordance with the Declaration recorded on \_\_\_\_\_, 1979, in Book \_\_\_\_\_, at Pages \_\_\_\_\_, and Condominium Map recorded on \_\_\_\_\_, 1979, in Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Jefferson County Records.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit, but also the undivided interest in the general common elements to said Unit and all other appurtenant properties and property rights, and incorporate all of the rights and burdens incident to ownership of a Condominium Unit and all of the limitations thereon as described in this Declaration and Condominium Map. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from an Owner's Unit and the use of all of the limited common elements appurtenant to said Unit as well as all of the general common elements.

(c) The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration, without specific reference(s) thereto.

7. Ownership - Title:

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

8. Separate Assessment and Taxation - Notice to Assessor:

Declarant shall give written notice to the assessor of the County of Jefferson, State of Colorado, of the creation of condominium ownership of this property as is provided by law, so that each Unit and the individual interest in the general common elements appurtenant thereto shall be deemed a separate parcel and subject to separate assessment and taxation. The Association, upon request of any first mortgagee, shall furnish proof that all taxes, real estate assessments and charges shall relate only to an individual Condominium Unit and not to the condominium project as a whole.

9. Use of General and Limited Common Elements:

Each owner may use the limited common elements and the general common elements with the other Condominium Unit Owners, and in

accordance with the purpose for which they are intended. The Association may adopt rules and regulations governing the use of general and limited common elements, provided such rules and regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument of conveyance or assignment, agrees to be bound by any such adopted rules and regulations.

10. Use and Occupancy:

Each Unit shall be occupied and used only as and for a single family residential dwelling for the owner, his family or his guests, or lessees provided the Declarant and its employees, representative, agents and contractors may maintain business and sales offices, construction facilities and yards, model Units and other facilities on the property during the period of sales. Notwithstanding the above, the Association may use any Condominium Unit which it owns or leases as a business office and/or residence for any on-site resident manager or custodian.

11. Easements for Encroachments:

In the event that any portion of the general common elements encroaches upon any Unit or Units or in the event that any portion of a Unit encroaches upon any other Unit or Units or upon any portion of the general common elements or in the event any encroachment shall occur in the future as a result of: (i) settling of a building; or (ii) alteration or repair to the general common elements; or (iii) repair or restoration of a building(s) or a Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings; a valid easement shall exist for the encroachment and for the maintenance of the same so long as the building(s) stands. In the event that any one or more of the Units or buildings or other improvements comprising part of the general common elements are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or on the Units for purposes of marketability of title or other purposes.

12. Mechanic's Lien Rights and Indemnification:

No labor performed or materials furnished and incorporated in a Unit with the consent of or at the request of the owner thereof or his agent, or his contractor or sub-contractor shall be the basis for filing of a lien against the Condominium Unit of any other owner not

expressly consenting to or requesting the same. Each owner shall indemnify and hold harmless each of the owners from and against all liability arising from the claim of any lien against the Condominium Unit of any other owner for construction performed, or for labor, materials, service or products incorporated in the owner's Unit at such owner's express or implied request. The provisions herein contained are subject to the rights of the Association as set forth in paragraph 15. Notwithstanding the foregoing, any mortgagee of a Condominium Unit who shall become the owner of such Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any other Owner against liability for claims arising prior to the date such mortgagee becomes an owner, but shall be under such obligation for any claims thereafter.

13. Nuisances:

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

No immoral, improper, offensive or unlawful use shall be made of the project or any property in which the Association owns an interest, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

14. Administration and Management:

The administration of this condominium property shall be governed by the By-Laws of Independence Square Condominium Owners Association, A Colorado corporation, not for profit, hereinafter referred to as the "Association". An owner of a Condominium Unit shall become a member of the Association upon conveyance to him of his Condominium Unit and shall remain a member for the period of his ownership. As shown and reserved in the Articles of Incorporation and By-Laws for Independence Square Condominium Owners Association, the designation and

appointment of a Board of Managers for a period of up to one (1) year or until first meeting of the Association, whichever occurs first, has been or will be exercised by the Declarant.

The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the project and to perform all of the duties required of it. Notwithstanding the above, unless at least seventy-five (75%) percent of the first mortgagees of Condominium Units (based upon one vote for each first mortgage owned or held) have given their prior written approval, the Association shall not be empowered or entitled to:

- (1) by act or omission, seek to abandon or terminate the condominium regime;
- (2) partition or subdivide any Condominium Unit;
- (3) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the general common elements;
- (4) use hazard insurance proceeds for loss to the improvements for other than repair, replacement or reconstruction of such improvements.

The Association shall grant to each first mortgagee of a Condominium Unit the right to examine the books and records of the Association at any reasonable time.

#### 15. Reservation for Access - Maintenance, Repair and Emergencies:

The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common elements therein, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to another Unit. Damage to the interior or any part of a Condominium 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 Unit, at the instance of the Association, shall be a common expense of all of the owners. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of a governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any owner, then such owner shall be solely responsible for the costs and expense of repairing such damage.

#### 16. Maintenance and Service Responsibility:

##### (a) Owner:

- (1) For maintenance purposes an owner shall be deemed to own the interior non-supporting walls, floors and ceilings of his Unit; the materials such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring, and

other materials which make up the finished surfaces of the perimeter walls, ceiling and floors within the Unit; but not including the pipes, wire, conduits or systems (which are general common elements and for brevity are herein and hereafter referred to as "utilities") running through his Unit which serve one or more other Units except as a tenant in common with the other owners. Such utilities shall not be disturbed or relocated by an owner without the written prior consent and approval of the Board of Managers, and any such alteration, relocation, enlargement, addition or modification shall be at the owner's expense, which expense shall include all expenses incurred by the Association in reference thereto.

(2) An owner shall maintain and keep in repair the interior of his Unit, including the fixtures, doors, windows and utilities located therein to the extent current repair shall be necessary in order to avoid damaging other Condominium Units. All fixtures and equipment and utilities installed within the Unit commencing at a point where the fixtures, equipment and utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness of the improvements or impair the proper functioning of the utilities, heating, air conditioning or plumbing systems or integrity of the buildings or impair any easement or hereditament. An owner shall always keep the balcony, porch or patio area adjoining and appurtenant to his Unit and any other limited common elements appurtenant thereto in a clean, orderly and sanitary condition.

(b) Association:

(1) The Association shall have the duty of maintaining and repairing all of the general common elements within the project and the cost of said maintenance and repair shall be a common expense of all of the owners. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof.

(2) The Association shall provide to the Owners the following services which shall be paid for out of the common expense assessment, to wit:

- (a) maintenance of the general common elements;
- (b) administration and management of the project;
- (c) providing common heating and lighting;
- (d) obtaining the insurance required in Paragraph 20 hereof;
- (e) endorsement of the covenants, conditions, and restrictions set forth in the Declaration, enforcement of all obligations owed to the Association by the Owners;
- (f) acting as attorney-in-fact in the event of damage or

destruction as provided for in Paragraph 25 hereof; and

- (g) performing all other acts required by this Declaration, or the Articles of Incorporation and By-Laws of the Association.

Notwithstanding the above, the Association reserves the right to hire one or more persons or entities, including a managing agent, contractors and employees to perform such services, provided, however, that any such contracts shall not be for a term in excess of one year renewable by parties for successive one year periods and shall provide that the same may be terminated on thirty days written notice without cause, or with cause, at any time by either party, and without payment of a termination fee.

**17. Compliance with Provisions of Declaration, By-Laws of Association:**

Each owner shall comply strictly with the provisions of this Declaration, the Certificate of Incorporation and By-Laws of this Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorney's fees and costs incurred in connection therewith, which action shall be maintainable by the Association's Board of Directors in the name of the Association on behalf of the owners, or, in a proper case, by an aggrieved owner.

**18. Revocation or Amendment to Declaration:**

- (a) Except as is otherwise provided, this Declaration shall not be revoked unless the Owners representing an aggregate ownership interest of 100% of the general common elements and all holders of all recorded first mortgages or deeds of trust consent and agree to such revocation by instrument duly recorded. This Declaration shall not be amended unless the owners representing an aggregate ownership of at least seventy-five (75%) percent of the general common elements and at least seventy-five (75%) percent of the holders of recorded first mortgages or deeds of trust consent and agree to such amendment by instrument(s) duly recorded; provided, however, that the undivided interest in the general common elements appurtenant to each Unit, as expressed in the Declaration, shall have a permanent character and shall not be altered without the consent of all of the Unit owners and all of the first mortgagees as expressed in an amended Declaration duly recorded. The consent(s) of any junior mortgagee shall not be required under the provisions of this paragraph. In determining whether the appropriate percentage of mortgagee approval is obtained when so required by the terms of this Declaration, each first mortgage shall have one (1) vote for each first mortgage owned.

(b) The Association shall at least thirty (30) days prior to the effective date of any amendment to this Declaration, notify the holders of all recorded first mortgages or deeds of trust encumbering a Condominium Unit(s) of such amendment.

19. Assessment for Common Expenses:

(a) All owners shall be obligated to pay the estimated assessments imposed by the Association to meet the common expenses attributable to the property included in this Declaration. The assessment shall be made in proportion to each Owner's interest in and to the general common elements. The limited common elements shall be maintained as general common elements and owners having exclusive use thereof shall not be subject to any special charges or assessments. (Except, however, this shall not impose upon the Association the obligation to clean or sweep or remove snow from any of the limited common elements). Assessments for the estimated common expenses, including, at the option of the Association, insurance shall be due monthly in advance on the first day of each month. The Association shall prepare and deliver by mail to each owner a monthly statement for the estimated actual expenses.

(b) Contributions 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.

(c) The assessments made for the common expenses shall be based upon the cash requirements deemed to be the aggregate sum the Association shall from time to time determine is to be paid by all of the owners, including Declarant, to provide for payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include among other things, expenses of management; taxes and special assessments until separately assessed, if assessed by the Association; fire insurance with extended coverage and vandalism and malicious mischief insurance with endorsements attached in the amount of the maximum replacement value of all of the Condominium Units, including all fixtures, interior walls and partitions decorated and finished surfaces of perimeter walls, floors and ceilings, doors and windows and elements or materials comprising a part of the Unit; casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash and garbage collections; wages; water charges; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of reasonable contingency or other reserve sinking or surplus funds, as well as other costs and expenses relating to the general common elements.

(d) The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the owners from their obligations to pay the same.

(e) The Association shall be obligated to establish a reserve fund for the maintenance, repair and replacement of those general common elements that must be replaced periodically and such reserve fund shall be funded through the monthly payments of the common expenses and not be extraordinary special assessments.

(f) Special Assessments:

In addition to the regular assessments authorized by this paragraph, the Association may levy in any assessment year a special assessment, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof. Any amounts assessed pursuant hereto shall be assessed equally to each of the Owners. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of 12% per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

20. Insurance:

(a) The Board of Managers of the Association shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates, established by the Colorado Insurance Commissioner, and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of AAA or better, covering the risks set forth below. The Board of Managers of the Association shall not obtain any policy where: (i) under the terms of the insurance company's charter, by-laws or policy, contributions of assessments may be made against the mortgagor or mortgagee's designee; or (ii) by the terms of carrier's charter, by-laws or policy, loss payments are contingent upon action by the company's Board of Directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds. The types of coverages to be obtained and

risks to be covered are as follows, to wit:

(1) Fire insurance with extended coverage and all risk endorsements, which endorsements shall include endorsements for vandalism, malicious mischief, boiler explosion and machinery with a minimum endorsed amount of \$50,000.00 per accident per location. Said casualty insurance shall insure the entire condominium project and any property, the nature of which is a common element (including all of the Units, fixtures therein initially installed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by Unit owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each mortgagee of a Condominium Unit, which shall provide that the loss, if any, thereunder, shall be payable to the Independence Square Condominium Owners Association, for the use and benefit of mortgagees as their interest may appear.

(2) If the condominium project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of Flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the condominium project in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid principal balances of the mortgages on the Condominium Units comprising the condominium project.

(3) Public Liability and property damage insurance in such limits as the Board of Managers of the Association may from time to time determine, but not in an amount less than \$500,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operations of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the project. Said policy shall also contain a "severability of interest endorsement".

(4) Worker's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(5) The Association shall purchase, in an amount not less than one hundred fifty (150%) percent of the Association's estimated annual operating expenses and reserves, fidelity coverage against dishonesty of employees, destruction or disappearance of money or

securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

(6) The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the project, including plate or other glass insurance and any personal property of the Association located thereon.

(b) All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Condominium Unit owner and shall provide that such policies may not be cancelled or modified without at least ten days prior written notice to all of the insured, including mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all mortgagees at least ten days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Independence Square Condominium Owners Association as the insured, as attorney-in-fact for all of the Condominium Unit owners, which policy or policies shall identify the interest of each Condominium Unit owner (owner's name and Unit number designation) and first mortgagee.

(c) Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Managers of the Association shall obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the entire condominium project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be affected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than ninety (90%) percent of the full replacement cost. Determination of maximum replacement value shall be made annually by one or more written appraisals to be furnished by a person knowledgeable of replacement cost, and each mortgagee shall be furnished with a copy thereof, within thirty (30) days after receipt of such written appraisals. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

(d) Unit owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit owner.

(e) Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal or other property belonging to an owner and public liability coverage within each Unit shall be the sole and direct responsibility of the Unit owner thereof, and the Board of Managers, the Association and/or the Managing Agent shall have no responsibility

therefor.

(e) In the event that there shall be any damage or destruction to, or loss to a Unit which exceeds \$1,000.00 or any damage or destruction to, or loss to the common elements which exceeds \$10,000.00, then notice of such damage or loss shall be given by the Association to each first mortgagee of said Condominium Unit within ten days after the occurrence of such event.

21. Lien for Non-Payment of Assessments:

All sums assessed by the Association but unpaid by the owner of any Condominium Unit, including interest thereon at eight per cent per annum, shall constitute a lien on such Unit superior (prior) to all other liens in favor of a governmental assessing entity, and all sums unpaid on a first Mortgage or first Trust Deed of records, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such lien.

To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the owner of the Condominium Unit and a description of the Condominium Unit. Such notice shall be signed on behalf of the Association and by an officer of the Association and shall be recorded in the Office of the Clerk and Recorder of the County of Jefferson. Such lien shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure by the Association of the defaulting owner's Condominium Unit in like manner as Mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all of the Condominium Unit owners who are members of the Association. In any such foreclosure the owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses and attorney's fees for filing the Notice or claim of lien, and all reasonable attorney's fees in connection with such foreclosure. The owner shall also be required to pay to the Association the monthly assessment for the Condominium Unit during the period of foreclosure and the Association shall be entitled to a receiver to collect the same. The Association on behalf of the Unit owners shall have the power to bid on the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same. The Association shall send to each first Mortgagee a copy of the Notice of Lien provided for herein. Any encumbrancer holding a lien on a Condominium Unit may, but shall not be required to, pay any unpaid common expense payable with respect thereto and upon such payment, such encumbrancer shall have a lien on such Unit for the amounts paid, of the same rank as the lien of his encumbrance, without the necessity of having to record a

notice or claim of such lien. Upon request of a mortgagee, the Association shall report to the mortgagee of a Condominium Unit any unpaid assessment remaining unpaid for longer than thirty days after the same is due, or other default of any covenant, condition, obligation or term of this Declaration not cured within thirty (30) days; provided, however, that a mortgagee shall have furnished to the Association, notice of such encumbrance.

Declarant states, in accordance with the requirements of the Colorado Condominium Ownership Act, that it is possible that liens other than mechanic's liens, assessment liens and tax liens may be obtained against the common elements, including judgement liens and purchase money mortgage liens.

**22. Owner's Obligation for Payment of Assessment:**

The amount of the expenses assessed by the Association against each Condominium Unit shall be the personal and individual debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. No owner may exempt himself from liability for his contribution toward the common expenses by a waiver of the use or enjoyment of any of the common elements or by abandonment of his Unit.

**23. Liability for Common Expenses Upon Transfer of Condominium Unit is Joint:**

Upon payment of a reasonable fee not to exceed Twenty Dollars and upon the written request of any owner, any Mortgagee, or any prospective Mortgagee of a Condominium Unit, the Association shall issue a written statement setting forth amount of the unpaid expenses assessed to such Unit, if any, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Unit, except for a first mortgagee who comes into possession of a Condominium Unit pursuant to the remedies provided in its mortgage or becomes an owner of a Condominium Unit pursuant to foreclosure of its mortgage or by the taking of a deed in lieu thereof, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of 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; provided however, and upon payment of a reasonable fee not to exceed Twenty Dollars, and upon written request any such prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association, unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall not be liable for, nor shall the Condominium Unit conveyed be subject to lien for any unpaid assessments against the subject Unit. Notwithstanding the terms and provisions set forth above, no first mortgagee shall be liable for any unpaid common expense assessments accruing prior to the time such mortgagee becomes the record owner of any Condominium Unit, whether by way of foreclosure or any proceedings in lieu thereof but will be for those thereafter.

24. 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) That any such junior mortgages shall always be subordinate to all terms, conditions, expenses, and other obligations created by this Declaration and by the By-Laws; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were affected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if not granted, may be executed by the Association as attorney-in-fact for such junior mortgagee.

25. Association - Attorney-in-fact:

This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its damage, destruction or obsolescence. Title to any Condominium is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a Deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint Independence Square Condominium Owners Association, a Colorado Corporation, not for profit, their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its damage, destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any

contract, Deed or any other instrument with respect to the interest of a Condominium Unit owner which may be necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding sub-paragraph means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the general and limited 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 replacement as is provided hereinafter.

(A) 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.

(B) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than seventy (70%) percent of the total replacement cost of all the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their Condominium Units. Such special assessment shall be a common expense and made pro rata according to each Owner's interest in the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or restoration of the improvements, using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his Condominium Unit and may be enforced and collected as is provided in paragraph 21. In addition thereto, the Association, as attorney-in-fact shall have the absolute right and power to sell the Condominium Unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this paragraph. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at a rate of 10% per annum, on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

1. For payment of the balance of the lien of any First Mortgage;
2. For payment of taxes and special assessment liens in favor of any assessing entity and the customary expenses of sale;
3. For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
5. The balance remaining, if any, shall be paid to the Condominium Unit owner.

(C) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than seventy (70%) percent of the total replacement cost of all of the Condominium Units in this project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their Condominium Units, provided, however, that owners representing an aggregate ownership interest of seventy-five (75%) percent or more of the general common elements and at least seventy-five (75%) percent of the first mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and By-Laws. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected according to each owner's interest in the common elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the owner. From each separate account the Association, as attorney-in-fact shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full payment of the

lien of any first mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each Condominium Unit owner's interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph B of this paragraph. In the event that the damage is to be repaired or reconstruction is to be made then the provisions of subparagraph B shall apply.

(D) The owners representing an aggregate ownership interest of eighty (80%) percent or more of the general common elements in this project may agree that the general common elements are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the approval of at least seventy-five (75%) percent of the first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent (10%) per annum, and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph B of this paragraph.

(E) The owners representing an aggregate ownership of eighty (80%) percent or more, of the general common elements may agree that the Condominium Units are obsolete and that the same should be sold. Such plan or agreement must have the approval of all of the first mortgagees of the Condominium Units. In such instance, the Association shall forthwith record a notice setting forth such facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, 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, the Articles of Incorporation and the By-Laws. The sale proceeds shall be apportioned among the owners on the basis of each Owner's interest in the general common elements, as such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owners. From each separate account, the Association, as attorney-in-fact shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph B of this paragraph.

26. Condemnation:

If at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, all or any part of the Condominium project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

(A) Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award" shall be payable to the Association.

(B) Complete Taking.

(1) In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the owners on the same basis of each Condominium Unit owner's interest in the general common elements, provided however, that if a standard different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

(2) On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Paragraph 25.

(C) Partial Taking. In the event that less than the entire condominium project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the owners as follows: (a) the total amount allocated to taking of or injury to the common elements, shall be apportioned among the owners on the basis of each owner's interest respectively in the common elements; (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and to the improvements an owner has made within his own Unit shall be apportioned to the particular Unit involved and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner as provided in Paragraph 25. In the event a partial taking results in the taking of a complete Unit, the owner thereof automatically shall cease to be a member of the Association, shall cease to hold any right, title or interest in the remaining common elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall re-allocate the ownership, voting rights and assessment ratio in accordance with this Declaration according to the same principles employed in this Declaration at its inception (square footage ratio) and shall submit such re-allocation to the owners and to first mortgagees of remaining units for amendment of this Declaration as provided in Paragraph 18.

(D) The Association shall notify each first mortgagee of any Condominium Unit of the commencement of the condemnation proceedings and shall notify said mortgagees in the event of the taking of all or any part of the general common elements, if the value of the general common elements taken exceeds \$10,000.00.

27. Personal Property for Common Use:

The Association may acquire and hold for the benefit of the condominium owners, real, tangible and intangible 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 condominium 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. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such real or personal property without any reference thereto to exclusion of a Bill of Sale. Each owner may use such real and personal property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. Sale of a Condominium Unit under foreclosure shall thereby entitle the purchaser thereof to the beneficial interest in the real and personal property associated with the foreclosed Condominium Unit.

**28. Registration by Owner of Mailing Address:**

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 and addressed in the name of the owner of 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 10200 West 44th Avenue, Suite 400, Wheat Ridge, Colorado, until such address is changed by a notice of address change duly recorded in the Office of the Clerk and Recorder, County of Jefferson, State of Colorado.

**29. Period of Condominium Ownership:**

The separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner and as provided in paragraph 18 of this Declaration or until terminated in the manner and as is provided in subparagraph (C) or (E) of paragraph 25 of this Declaration.

**30. Restrictive Covenants:**

(A) The property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. All buildings or structures are presently erected upon the property and no buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings other than buildings on the Map shall be built on the property where the builder theretofore programmed and constructed a building. No structures of a temporary character, trailer, basement,

tent, shack, garage, barn or other out building shall be used or permitted to be kept or stored on any portion of the premises at any time either temporarily or permanently.

(B) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, his agents, employees and contractors to maintain during the period of sale of the Condominium Units, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the sale of Condominium Units and interests, including, but without limitation, a business office, storage area, signs, model Units, sales office, parking areas and lighting for one year.

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

(D) No advertising signs (except one of not more than one square foot "For Rent" or "For Sale" sign per Unit), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any Condominium Unit or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the property. Provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the maintenance of buildings and improvements, if any, of the Declarant, its agents, contractors, and assigns during the sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

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

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

(G) No exterior additions, alterations, or decorating to any

buildings, nor changes in fences, hedges, walls, gates, and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, heights, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by the Association, or by a representative designated by it.

**31. Association Right to Acquire Additional Property:**

(A) The Board of Managers may acquire and hold for the benefit of all of the Condominium Unit owners tangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the Condominium Unit owners in the same proportions as their respective interests in the general common elements, and such interest therein shall not be transferable except with a conveyance of a Condominium Unit. A conveyance of a Condominium Unit shall transfer to the grantee ownership of the grantor's beneficial interest in all such property interests associated with and appurtenant to the subject Condominium Unit.

(B) The owners of the Condominium Units described in Exhibit B shall have a perpetual non-exclusive easement in common with all other Condominium Unit owners in this Condominium project, on, over and across driveways and extensions thereof which are located on the Condominium project for purposes of ingress and egress to and from the Units from the public street which adjoins the Condominium project and any other common element (e.g., area and facility) so designated on the Map or Maps; subject, however, to reasonable regulations adopted and amended by the Association.

**32. Exculpatory Clause:**

Any owners who acquire a title to a Condominium Unit from the Declarant hereby acknowledges and agrees that the Declarant makes no warranty as to the fitness of said Condominium Unit or the electrical, plumbing, heating and air conditioning systems situate therein. Furthermore, Declarant does not make any warranties concerning the structural integrity, footings, foundations or roofs of the buildings, or operation of other facilities.

**33. Acceptance of Provisions of all Documents:**

The conveyance or encumbrance of a Condominium Unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles of Incorporation and Association By-Laws and Rules and Regulations and Management Agreement and shall be

binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

34. General:

(A) 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 validity 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 hereby.

(B) 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.

(C) Whenever used herein, unless the context shall otherwise provide, the plural, the singular, and the use of any gender shall include all genders.

(D) In the event there shall be any conflict between the provisions of this Declaration and any By-Law or rule and regulation of the Association, the provisions of this Declaration shall be deemed controlling.

(E) Any institutional holder of a first mortgage on a unit in the project will upon request be entitled to: (a) inspect the books and records of the project during normal business hours; (b) receive an annual audited financial statement of the project within ninety (90) days following the end of any fiscal year of the project; and (c) written notice of all meetings of the Owners Association and be permitted to designate a representative to attend such meetings.

(F) With the exception of a lender in possession of a condominium unit following a default and a foreclosed mortgage, and foreclosure proceedings or any deed or other arrangement in lieu of foreclosure, no Unit owner may be permitted to lease his unit for transient or hotel purposes. No Unit owner may lease less than the entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the By-Laws and at any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing.

(G) A Manager under contract with the Association shall be required to post a fidelity bond in the amount of \$50,000.00 as a condition of such management contract if such contract required handling of funds of the Owners Association.

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27

(H) Two-thirds of the first mortgagees or owners of the individual condominium units must give their prior written approval, or the Condominium Homeowner's Association shall not be entitled to change the pro rata interest or obligations of any individual condominium for the purpose of:

- (i) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or
- (ii) Determining the pro rata share of ownership of each condominium unit in the common elements.

Dated JUNE 7, 1979, 1979.

DECLARANT: ISC Joint Venture

Omni Development Company, Inc., a Joint Venturer

BY: Randolph G. Currier  
Randolph G. Currier, President

Carlyn Development, Inc., a Joint Venturer

BY: Carl M. Dawson  
Carl M. Dawson, President

The Gold Reserve, Inc., a Joint Venturer

BY: Gary A. Gold  
Gary A. Gold, President

STATE OF COLORADO }  
COUNTY OF JEFFERSON ) ss.

The foregoing instrument was acknowledged before me this 7th day of June, 1979, by ISC Joint Venture, by OMNI Development Company Inc., a Joint Venturer by Randolph G. Currier, as President, Carlyn Development Inc., a Joint Venturer, by Carl M. Dawson, as President and The Gold Reserve Inc., a Joint Venturer, by Gary A. Gold, as President.

My commission expires: August 17, 1982

Witness my hand and official seal.

Betty LaBriola  
Notary Public

## EXHIBIT A

INDEPENDENCE SQUARE CONDOMINIUM TOWNHOMES  
LEGAL DESCRIPTION

A part of the NW1/4 of Section 22, T3S, R69W, of the 6th P.M., County of Jefferson, State of Colorado, being more particularly described as follows:

From the NW corner of Section 22, T3S, R69W, 6th P.M., the point of beginning bears S 0 09' W, 656.8 ft., and S 89 58' E, 1.321.2 ft. to the point of beginning. Said point being the center of the intersection of Mary and Second Street as shown by plat of Juchem's Garden Place; thence S 0 5' W, 328.62 ft., thence N 89 57' W, 330.4 ft., thence N 0 05' E, 328.6 ft.; thence N 89 58' E, 330.3 ft. to the point of beginning except any part of subject property lying within Independence Street. Said parcel containing 2.4861 acres more or less.

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29

## EXHIBIT B

INDEPENDENCE SQUARE CONDOMINIUM TOWNHOMES  
COMMON ELEMENT DISTRIBUTION

<u>BUILDING</u>	<u>UNIT</u>	<u>PERCENT</u>
1	1	3.066
1	2	3.065
2	1	3.065
2	2	3.065
3	1	3.065
3	2	3.065
4	1	3.065
4	2	3.065
5	1	3.065
5	2	3.066
6	1	2.297
6	2	2.297
6	3	2.297
6	4	2.297
6	5	2.297
6	6	2.297
6	7	2.297
6	8	2.297
6	9	2.297
6	10	2.297
7	1	2.297
7	2	2.297
7	3	2.297
7	4	2.297
7	5	2.297
7	6	2.297
7	7	2.297
7	8	2.297
7	9	2.297
7	10	2.297
8	1	2.128
8	2	2.128
8	3	2.128
8	4	2.128
8	5	2.128
8	6	2.128
8	7	2.128
8	8	2.128
8	9	2.128
8	10	2.128
8	11	2.128

notice or claim of such lien. Upon request of a mortgagee, the Association shall report to the mortgagee of a Condominium Unit any unpaid assessment remaining unpaid for longer than thirty days after the same is due, or other default of any covenant, condition, obligation or term of this Declaration not cured within thirty (30) days; provided, however, that a mortgagee shall have furnished to the Association, notice of such encumbrance.

Declarant states, in accordance with the requirements of the Colorado Condominium Ownership Act, that it is possible that liens other than mechanic's liens, assessment liens and tax liens may be obtained against the common elements, including judgement liens and purchase money mortgage liens.

**22. Owner's Obligation for Payment of Assessment:**

The amount of the expenses assessed by the Association against each Condominium Unit shall be the personal and individual debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. No owner may exempt himself from liability for his contribution toward the common expenses by a waiver of the use or enjoyment of any of the common elements or by abandonment of his Unit.

**23. Liability for Common Expenses Upon Transfer of Condominium Unit is Joint:**

Upon payment of a reasonable fee not to exceed Twenty Dollars and upon the written request of any owner, any Mortgagee, or any prospective Mortgagee of a Condominium Unit, the Association shall issue a written statement setting forth amount of the unpaid expenses assessed to such Unit, if any, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Unit, except for a first mortgagee who comes into possession of a Condominium Unit pursuant to the remedies provided in its mortgage or becomes an owner of a Condominium Unit pursuant to foreclosure of its mortgage or by the taking of a deed in lieu thereof, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of 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; provided however, and upon payment of a reasonable fee not to exceed Twenty Dollars, and upon written request any such prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association, unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall not be liable for, nor shall the Condominium Unit conveyed be subject to lien for any unpaid assessments against the subject Unit. Notwithstanding the terms and provisions set forth above, no first mortgagee shall be liable for any unpaid common expense assessments accruing prior to the time such mortgagee becomes the record owner of any Condominium Unit, whether by way of foreclosure or any proceedings in lieu thereof but will be for those thereafter.

24. 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) That any such junior mortgages shall always be subordinate to all terms, conditions, expenses, and other obligations created by this Declaration and by the By-Laws; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were affected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if not granted, may be executed by the Association as attorney-in-fact for such junior mortgagee.

25. Association - Attorney-in-fact:

This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its damage, destruction or obsolescence. Title to any Condominium is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a Deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint Independence Square Condominium Owners Association, a Colorado Corporation, not for profit, their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its damage, destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any

contract, Deed or any other instrument with respect to the interest of a Condominium Unit owner which may be necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding sub-paragraph means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the general and limited 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 replacement as is provided hereinafter.

(A) 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.

(B) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than seventy (70%) percent of the total replacement cost of all the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their Condominium Units. Such special assessment shall be a common expense and made pro rata according to each Owner's interest in the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or restoration of the improvements, using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his Condominium Unit and may be enforced and collected as is provided in paragraph 21. In addition thereto, the Association, as attorney-in-fact shall have the absolute right and power to sell the Condominium Unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this paragraph. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at a rate of 10% per annum, on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

1. For payment of the balance of the lien of any First Mortgage;
2. For payment of taxes and special assessment liens in favor of any assessing entity and the customary expenses of sale;
3. For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
5. The balance remaining, if any, shall be paid to the Condominium Unit owner.

(C) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than seventy (70%) percent of the total replacement cost of all of the Condominium Units in this project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their Condominium Units, provided, however, that owners representing an aggregate ownership interest of seventy-five (75%) percent or more of the general common elements and at least seventy-five (75%) percent of the first mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and By-Laws. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected according to each owner's interest in the common elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the owner. From each separate account the Association, as attorney-in-fact shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full payment of the

lien of any first mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each Condominium Unit owner's interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph B of this paragraph. In the event that the damage is to be repaired or reconstruction is to be made then the provisions of subparagraph B shall apply.

(D) The owners representing an aggregate ownership interest of eighty (80%) percent or more of the general common elements in this project may agree that the general common elements are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the approval of at least seventy-five (75%) percent of the first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent (10%) per annum, and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph B of this paragraph.

(E) The owners representing an aggregate ownership of eighty (80%) percent or more, of the general common elements may agree that the Condominium Units are obsolete and that the same should be sold. Such plan or agreement must have the approval of all of the first mortgagees of the Condominium Units. In such instance, the Association shall forthwith record a notice setting forth such facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, 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, the Articles of Incorporation and the By-Laws. The sale proceeds shall be apportioned among the owners on the basis of each Owner's interest in the general common elements, as such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owners. From each separate account, the Association, as attorney-in-fact shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph B of this paragraph.

26. Condemnation:

If at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, all or any part of the Condominium project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

(A) Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award" shall be payable to the Association.

(B) Complete Taking.

(1) In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the owners on the same basis of each Condominium Unit owner's interest in the general common elements, provided however, that if a standard different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

(2) On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Paragraph 25.

(C) Partial Taking. In the event that less than the entire condominium project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the owners as follows: (a) the total amount allocated to taking of or injury to the common elements, shall be apportioned among the owners on the basis of each owner's interest respectively in the common elements; (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and to the improvements an owner has made within his own Unit shall be apportioned to the particular Unit involved and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner as provided in Paragraph 25. In the event a partial taking results in the taking of a complete Unit, the owner thereof automatically shall cease to be a member of the Association, shall cease to hold any right, title or interest in the remaining common elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall re-allocate the ownership, voting rights and assessment ratio in accordance with this Declaration according to the same principles employed in this Declaration at its inception (square footage ratio) and shall submit such re-allocation to the owners and to first mortgagees of remaining units for amendment of this Declaration as provided in Paragraph 18.

(D) The Association shall notify each first mortgagee of any Condominium Unit of the commencement of the condemnation proceedings and shall notify said mortgagees in the event of the taking of all or any part of the general common elements, if the value of the general common elements taken exceeds \$10,000.00.

27. Personal Property for Common Use:

The Association may acquire and hold for the benefit of the condominium owners, real, tangible and intangible 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 condominium 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. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such real or personal property without any reference thereto to exclusion of a Bill of Sale. Each owner may use such real and personal property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. Sale of a Condominium Unit under foreclosure shall thereby entitle the purchaser thereof to the beneficial interest in the real and personal property associated with the foreclosed Condominium Unit.

**28. Registration by Owner of Mailing Address:**

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 and addressed in the name of the owner of 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 10200 West 44th Avenue, Suite 400, Wheat Ridge, Colorado, until such address is changed by a notice of address change duly recorded in the Office of the Clerk and Recorder, County of Jefferson, State of Colorado.

**29. Period of Condominium Ownership:**

The separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner and as provided in paragraph 18 of this Declaration or until terminated in the manner and as is provided in subparagraph (C) or (E) of paragraph 25 of this Declaration.

**30. Restrictive Covenants:**

(A) The property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. All buildings or structures are presently erected upon the property and no buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings other than buildings on the Map shall be built on the property where the builder theretofore programmed and constructed a building. No structures of a temporary character, trailer, basement,

tent, shack, garage, barn or other out building shall be used or permitted to be kept or stored on any portion of the premises at any time either temporarily or permanently.

(B) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, his agents, employees and contractors to maintain during the period of sale of the Condominium Units, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the sale of Condominium Units and interests, including, but without limitation, a business office, storage area, signs, model Units, sales office, parking areas and lighting for one year.

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

(D) No advertising signs (except one of not more than one square foot "For Rent" or "For Sale" sign per Unit), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any Condominium Unit or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the property. Provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the maintenance of buildings and improvements, if any, of the Declarant, its agents, contractors, and assigns during the sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

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

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

(G) No exterior additions, alterations, or decorating to any

buildings, nor changes in fences, hedges, walls, gates, and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, heights, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by the Association, or by a representative designated by it.

**31. Association Right to Acquire Additional Property:**

(A) The Board of Managers may acquire and hold for the benefit of all of the Condominium Unit owners tangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the Condominium Unit owners in the same proportions as their respective interests in the general common elements, and such interest therein shall not be transferable except with a conveyance of a Condominium Unit. A conveyance of a Condominium Unit shall transfer to the grantee ownership of the grantor's beneficial interest in all such property interests associated with and appurtenant to the subject Condominium Unit.

(B) The owners of the Condominium Units described in Exhibit B shall have a perpetual non-exclusive easement in common with all other Condominium Unit owners in this Condominium project, on, over and across driveways and extensions thereof which are located on the Condominium project for purposes of ingress and egress to and from the Units from the public street which adjoins the Condominium project and any other common element (e.g., area and facility) so designated on the Map or Maps; subject, however, to reasonable regulations adopted and amended by the Association.

**32. Exculpatory Clause:**

Any owners who acquire a title to a Condominium Unit from the Declarant hereby acknowledges and agrees that the Declarant makes no warranty as to the fitness of said Condominium Unit or the electrical, plumbing, heating and air conditioning systems situate therein. Furthermore, Declarant does not make any warranties concerning the structural integrity, footings, foundations or roofs of the buildings, or operation of other facilities.

**33. Acceptance of Provisions of all Documents:**

The conveyance or encumbrance of a Condominium Unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles of Incorporation and Association By-Laws and Rules and Regulations and Management Agreement and shall be

binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

34. General:

(A) 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 validity 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 hereby.

(B) 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.

(C) Whenever used herein, unless the context shall otherwise provide, the plural, the singular, and the use of any gender shall include all genders.

(D) In the event there shall be any conflict between the provisions of this Declaration and any By-Law or rule and regulation of the Association, the provisions of this Declaration shall be deemed controlling.

(E) Any institutional holder of a first mortgage on a unit in the project will upon request be entitled to: (a) inspect the books and records of the project during normal business hours; (b) receive an annual audited financial statement of the project within ninety (90) days following the end of any fiscal year of the project; and (c) written notice of all meetings of the Owners Association and be permitted to designate a representative to attend such meetings.

(F) With the exception of a lender in possession of a condominium unit following a default and a foreclosed mortgage, and foreclosure proceedings or any deed or other arrangement in lieu of foreclosure, no Unit owner may be permitted to lease his unit for transient or hotel purposes. No Unit owner may lease less than the entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the By-Laws and at any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing.

(G) A Manager under contract with the Association shall be required to post a fidelity bond in the amount of \$50,000.00 as a condition of such management contract if such contract required handling of funds of the Owners Association.

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27

(H) Two-thirds of the first mortgagees or owners of the individual condominium units must give their prior written approval, or the Condominium Homeowner's Association shall not be entitled to change the pro rata interest or obligations of any individual condominium for the purpose of:

- (i) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or
- (ii) Determining the pro rata share of ownership of each condominium unit in the common elements.

Dated JUNE 7, 1979, 1979.

DECLARANT: ISC Joint Venture

Omni Development Company, Inc., a Joint Venturer

BY: Randolph G. Currier  
Randolph G. Currier, President

Carlyn Development, Inc., a Joint Venturer

BY: Carl M. Dawson  
Carl M. Dawson, President

The Gold Reserve, Inc., a Joint Venturer

BY: Gary A. Gold  
Gary A. Gold, President

STATE OF COLORADO }  
COUNTY OF JEFFERSON ) ss.

The foregoing instrument was acknowledged before me this 7th day of June, 1979, by ISC Joint Venture, by OMNI Development Company Inc., a Joint Venturer by Randolph G. Currier, as President, Carlyn Development Inc., a Joint Venturer, by Carl M. Dawson, as President and The Gold Reserve Inc., a Joint Venturer, by Gary A. Gold, as President.

My commission expires: August 17, 1982

Witness my hand and official seal.

Betty LaBriola  
Notary Public

## EXHIBIT A

INDEPENDENCE SQUARE CONDOMINIUM TOWNHOMES  
LEGAL DESCRIPTION

A part of the NW1/4 of Section 22, T3S, R69W, of the 6th P.M., County of Jefferson, State of Colorado, being more particularly described as follows:

From the NW corner of Section 22, T3S, R69W, 6th P.M., the point of beginning bears S 0 09' W, 656.8 ft., and S 89 58' E, 1.321.2 ft. to the point of beginning. Said point being the center of the intersection of Mary and Second Street as shown by plat of Juchem's Garden Place; thence S 0 5' W, 328.62 ft., thence N 89 57' W, 330.4 ft., thence N 0 05' E, 328.6 ft.; thence N 89 58' E, 330.3 ft. to the point of beginning except any part of subject property lying within Independence Street. Said parcel containing 2.4861 acres more or less.

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29

## EXHIBIT B

INDEPENDENCE SQUARE CONDOMINIUM TOWNHOMES  
COMMON ELEMENT DISTRIBUTION

<u>BUILDING</u>	<u>UNIT</u>	<u>PERCENT</u>
1	1	3.066
1	2	3.065
2	1	3.065
2	2	3.065
3	1	3.065
3	2	3.065
4	1	3.065
4	2	3.065
5	1	3.065
5	2	3.066
6	1	2.297
6	2	2.297
6	3	2.297
6	4	2.297
6	5	2.297
6	6	2.297
6	7	2.297
6	8	2.297
6	9	2.297
6	10	2.297
7	1	2.297
7	2	2.297
7	3	2.297
7	4	2.297
7	5	2.297
7	6	2.297
7	7	2.297
7	8	2.297
7	9	2.297
7	10	2.297
8	1	2.128
8	2	2.128
8	3	2.128
8	4	2.128
8	5	2.128
8	6	2.128
8	7	2.128
8	8	2.128
8	9	2.128
8	10	2.128
8	11	2.128