

**CONDOMINIUM DECLARATION  
FOR  
HISTORIC LINDEN CONDOMINIUMS  
(a Common Interest Community)**

THIS DECLARATION is made and entered into this 28th day of April, 1995, by HISTORIC LINDEN, LLC, a Colorado Limited Liability Company, hereinafter referred to as the "Declarant."

**RECITALS**

A. The Declarant is the owner of that certain real property located in the County of Larimer, State of Colorado, legally described on **Exhibit "A"** attached hereto and incorporated herein by reference ("Real Estate").

B. The Declarant desires to create a Condominium Common Interest Community on the Real Estate, pursuant to the Colorado Common Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time ("Act"), in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be for common ownership solely by the Owners of the separate ownership interests.

C. The Declarant has caused to be incorporated under the laws of the State of Colorado HISTORIC LINDEN CONDOMINIUM ASSOCIATION, a nonprofit corporation, for the purpose of exercising the functions herein set forth.

**ARTICLE I. SUBMISSION OF REAL ESTATE**

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

(HF&M 04/25/95)

88/P  
Scott Fried  
AMERICAN HERITAGE TITLE

**ARTICLE II. DEFINITIONS**

Section 1: When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Act or in the Plat and Map of the Real Estate shall have the meanings provided in the following sections of this Article:

(a) "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Association.

(b) "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

(c) "Association" shall mean and refer to a unit owners' association organized and existing under §38-33.3-301 of the Act.

(d) "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

(e) "Common Elements" shall mean and refer to all portions of the Condominium (including all of the Declarant's right, title and interest in and to the facade improvements attached to the exterior of the Condominium) other than the Units.

(f) "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

(g) "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(h) "Common Interest Community" shall mean and refer to the Real Estate and all improvements constructed thereon.

(i) "Declarant" shall mean and refer to any Person or group of Persons acting in concert who:

- (1) As a part of a common promotional plan, offers to dispose of to a Purchaser such Declarant's interest in a Unit not previously disposed of to a Purchaser; or

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(2) Reserves or succeeds to any Special Declarant Right.

(j) "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats and maps of the Real Estate recorded in the Clerk and Recorder's office of Larimer County, Colorado.

(k) "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a Security Interest.

(l) "Executive Board" shall mean and refer to the Executive Board of the Association.

(m) "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Unit in the Common Interest Community.

(n) "Insurer" shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and who has provided written notice of such interest to the Association.

(o) "Limited Common Elements" shall mean and refer to a portion of the Common Elements allocated by this Declaration or by the operation of §38-33.3-202(1)(b) or (1)(d) of the Act for the exclusive use of one (1) or more Units but fewer than all of the Units.

(p) "Mortgagee" shall mean and refer to any Person who has a Security Interest in a Unit and who has provided written notice of such interest to the Association.

(q) "Person" shall mean and refer to a natural person, a corporation, a partnership, an association, a trust, or any other entity or combination thereof.

(r) "Plat and Map" shall mean and refer to the Plat and Map of the Real Estate recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and all recorded amendments thereto.

(s) "Purchaser" shall mean and refer to a Person, other than a Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Unit, other than:

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- (1) A leasehold interest in a Unit of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or
  - (2) A Security Interest.

(t) "Real Estate" shall mean and refer to the real property described on **Exhibit "A"** attached hereto and incorporated herein by reference, including structures, fixtures, and other improvements and interests that, by custom usage or law, pass with a conveyance of land, though not described in the contract of sale or instrument of conveyance.

(u) "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

(v) "Security Interest" shall mean and refer to an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation. "First Security Interest" shall mean and refer to a Security Interest in a Unit prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

(w) "Unit" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration and Plat and Map.

(x) "Unit Owner" or "Owner" shall mean and refer to the Declarant or other Person who owns a Unit but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the Owner of any Unit created in the Declaration until that Unit is conveyed to another Person.

Section 2: Other Terms Defined in Act. Unless the context clearly indicates otherwise, other terms defined in the Act shall have the meanings attributable to such terms in the Act.

Section 3: Other Terms in Declaration. Other terms in this Declaration may be defined in specific provisions contained herein and shall have the meaning assigned by such definition.

### ARTICLE III. COMMON INTEREST COMMUNITY

Section 1: Name. The name of the Common Interest Community is HISTORIC LINDEN CONDOMINIUMS.

Section 2: Association. The name of the Association is HISTORIC LINDEN CONDOMINIUM ASSOCIATION.

Section 3: Condominium. The Common Interest Community is a condominium.

Section 4: County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

Section 5: Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth on Exhibit "A" attached hereto and incorporated herein by reference.

Section 6: Maximum Number of Units. The maximum number of Units that the Declarant reserves the right to create within the Common Interest Community is three (3).

Section 7: Boundaries of Units. The boundaries of each Unit are located as shown on the Plat and Map and are more particularly described as follows:

(a) Walls, floors, and ceilings are designated as boundaries of a Unit.

(b) Each Unit shall include the heating, hot water, and air-conditioning apparatus exclusively serving the Unit, whether or not located within the boundaries of the Unit.

Section 8: Identification of Units. The Identifying Number of each Unit is shown on the Plat and Map.

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Section 9: Description of Condominium Unit. After the Plat and Map and this Declaration have been recorded in the Office of the County Clerk and Recorder of Larimer County, Colorado, every contract, deed, lease, Security Interest, trust deed, will or other instrument may legally describe a Condominium Unit as follows:

Condominium Unit \_\_\_\_\_, HISTORIC LINDEN CONDOMINIUMS, in accordance with the Plat and Map of Historic Linden Condominiums recorded on April 28, 1995, at Reception No. \_\_\_\_\_ and subject to the Condominium Declaration for Historic Linden Condominiums recorded on April 28, 1995, at Reception No. \_\_\_\_\_ of the Larimer County, Colorado 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 Common Elements appurtenant 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 the Plat and Map. Each such description shall be construed to include a non-exclusive easement for use of all of the Limited Common Elements appurtenant to said Unit as well as all the general Common Elements.

Section 10: Allocated Interests. The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association shall be allocated among the Owners as follows:

(a) Each Owner's share of the undivided interest in the Common Elements and Common Expenses shall be a fraction, the numerator of which shall be the number of square feet within the Owner's Unit and the denominator of which shall be the total number of square feet within all Units.

(b) Each Owner shall be entitled to one (1) vote for each square foot within the Unit owned.

The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association for each Unit are set forth on **Exhibit "B"** attached hereto and incorporated herein by reference.

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Section 11: Recording Data. All easements and licenses to which the Common Interest Community is presently subject are described on the Plat and Map and/or Exhibit "C" attached hereto and incorporated herein by reference. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.

Section 12: Notice. Notice of matters affecting the Common Interest Community may be given to Unit Owners by the Association or by other Unit Owners in the following manner: notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States mail.

#### **ARTICLE IV. ASSOCIATION**

Section 1: Authority. The business and affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by its Bylaws as amended from time to time.

Section 2: Powers. The Association shall have all of the powers, authority, and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Community. The Association may assign its future income, including its rights to receive the Common Expense assessments, only by the affirmative vote of the Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated at a meeting called for that purpose.

Section 3: Declarant Control. The Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Association for a period of one (1) year after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of §38-33.3-303(5) of the Act.

#### **ARTICLE V. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS**

Section 1: Special Declarant Rights. Declarant hereby reserves the right for a period of one (1) year after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, to perform the acts and exercise the rights hereinafter specified ("Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete or make improvements indicated on the Plat and Map.

(b) Construction Easements. The right to use the Common Elements for the purpose of making improvements within the Common Interest Community or within the Real Estate.

(c) Merger. The right to merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership.

(d) Control of Association and Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member.

Section 2: Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 1 above, Declarant also reserves the following additional rights ("Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, and parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of and to serve the Unit Owners within the Common Interest Community.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, which may or may not be a part of the Common Interest Community for the benefit of the Unit Owners and/or the Association.

(c) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 3: Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.



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**ARTICLE VI. ASSESSMENT FOR COMMON EXPENSES**

Section 1: Personal Obligation of Owners for Common Expenses. The Declarant, for each Unit owned, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Common Expense assessments imposed by the Association. Such assessments, including fees, charges, late charges, attorney's fees, fines, and interest, charged by the Association shall be the personal obligation of the Unit Owner at the time when the assessment or other charges became or fell due. The personal obligation to pay any past-due sums due the Association shall not pass to a successor in title unless expressly assumed by it.

Section 2: Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners and for the improvement, repair, replacement, and maintenance of the Common Elements.

Section 3: Amount of Assessment. The amount of the assessment for the estimated Common Expenses which shall be paid by each Owner shall be determined by dividing the aggregate sum the Association reasonably determines to be paid by all Owners by the total number of square feet within all Units within the Common Interest Community, and the Owner of each Unit shall pay his proportionate share of such aggregate sum based upon the number of square feet within such Owner's Unit.

Section 4: Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of a Unit by the Declarant to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. The Executive Board may, at its discretion, permit annual assessments to be payable in twelve (12) equal monthly installments.

Section 5: Reserve Fund. Upon the first sale, transfer, or conveyance of a Unit, the Purchaser or transferee of the Unit shall deposit with the Association as a reserve fund an amount equal to one-sixth (1/6) of the annual assessment established by the Executive Board for the year in which the transfer occurs. If, at

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any time, an Owner is in default in the payment of any assessments due to the Association, the Association shall have the right to use said reserve, or as much thereof as may be necessary, to pay any delinquent amount owed to the Association and to reimburse the Association for any expenses incurred by the Association in collecting delinquent assessments from the Owner. In such event, the Owner shall, upon written demand of the Association, promptly remit to the Association a sufficient amount of cash to restore the reserve to its original amount. In the event the reserve account is not used to make delinquent payments, then it shall be refunded to the Owner upon the sale of the Owner's Unit without interest. The Association shall have the right to commingle the reserve account with other funds of the Association and shall have no obligation to retain the reserve funds in a separate account or pay interest on the reserve funds. The reserve account shall not be deemed to be liquidated damages, and if claims of the Association against an Owner exceed the reserve account, the Owner shall remain liable for the payment of the balance of such claims to the Association.

**ARTICLE VII. LIEN FOR NONPAYMENT OF COMMON EXPENSES**

The Common Expense assessments of the Association shall be a continuing lien upon the Unit against which each assessment is made. A lien under this Article is prior to all other liens and encumbrances on a Unit, except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a First Security Interest on the Unit recorded before the date on which the Common Expense assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Article does not prohibit an action to recover sums for which this Article creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Association's lien, except that the sale or transfer of any Unit pursuant to a foreclosure of any First Security Interest or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture, shall only extinguish the Association's lien as provided in the Act. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure nor cancellation nor forfeiture, shall relieve any Unit from continuing liability for any Common Expense assessments thereafter becoming due nor from the lien thereof.

Any assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Executive Board. In addition,

the Executive Board may assess a late charge thereon. Any Owner who fails to pay any assessment, charge, or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the Association, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Unit as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association or monthly or other installments thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien.

#### **ARTICLE VIII. MORTGAGEE PROTECTION**

Section 1: Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

Section 2: Notice of Actions. The Association shall give prompt written notice to each Mortgagee and Insurer of (and each Unit Owner hereby consents to and authorizes such notice):

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable.

(b) Any delinquency in the payment of Common Expense assessments owed by a Unit Owner whose Unit is subject to a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

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(d) Any proposed action which would require the consent of a specified percentage of Mortgagees as hereinafter provided.

(e) Any judgment rendered against the Association.

Section 3: Consent and Notice Required.

(a) Document Changes. Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any provision of this Declaration pertaining to the matters hereinafter listed by the Association or Unit Owners shall be effective without notice to all Mortgagees and Insurers, and the vote of at least sixty-seven percent (67%) of the total votes of all Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Mortgagees (or any greater Mortgagee approval required by this Declaration):

- (1) Voting rights.
- (2) Assessments, assessment liens, or priority of assessment liens.
- (3) Reserves for maintenance, repair, and replacement of Common Elements.
- (4) Responsibility for maintenance and repairs.
- (5) Reallocation of interests in the Common Elements or Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and the Mortgagees holding Security Interests in such Units need approve such action.
- (6) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved or a Unit is being subdivided, then only those Unit Owners and the Mortgagees holding Security Interests in such Unit or Units must approve such action.
- (7) Convertibility of Units into Common Elements or Common Elements into Units.

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- (8) Expansion or contraction of the Common Interest Community or the addition, annexation, or withdrawal of property to or from the Common Interest Community.
  - (9) Insurance or fidelity bonds.
  - (10) Leasing of Units.
  - (11) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit.
  - (12) A decision by the Association to establish self-management when professional management had been required previously by the Declaration or any Mortgagee.
  - (13) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than that specified in the Declaration.
  - (14) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation of the Common Elements.
  - (15) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, without the notice to all Mortgagees and Insurers as required by Section 2 above and approval of at least fifty-one percent (51%) (or the indicated percentage) of the Mortgagees:

- (1) Convey or encumber the Common Elements or any portion thereof without approval by eighty percent (80%) of the Mortgagees. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause.)

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- (2) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation of the Common Elements without approval by sixty-seven percent (67%) of the votes of Mortgagees.
  - (3) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case, only the Owners of Units affected and Mortgagees of those Units need approve the action.
  - (4) The granting of any permits, easements, leases, licenses, or concessions through or over the Common Elements (excluding, however, [i] any utility, road, or other easements serving or necessary to serve the Common Interest Community; [ii] any leases, licenses, or concessions for no more than one [1] year; and [iii] any leases, licenses, easements and concessions with The Last Salvation, LLC, or any successor relative to the use of the elevator, elevator shaft, lobby areas and stairwells in connection with the adjacent building presently owned by The Last Salvation, LLC, regardless of the duration of such agreement[s]).
  - (5) The establishment of self-management when professional management had been required previously by the Declaration or by a Mortgagee.
  - (6) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than that specified in the Declaration.
  - (7) The merger of the Common Interest Community with any other common interest community.
  - (8) The assignment of the future income of the Association, including its right to receive Common Expense assessments.
  - (9) Any action taken not to repair or replace the Common Elements.

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(c) Collection of Assessments. The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Mortgagees.

(d) Approval by Mortgagee or Insurer. The failure of a Mortgagee or Insurer to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, return receipt requested, for approval of an addition or amendment to the Declaration wherever Mortgagee or Insurer approval is required shall constitute an implied approval of the addition or amendment.

Section 4: Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules and Regulations, books and records, and financial statements. The Association shall permit any Mortgagee or Insurer to inspect the books and records of the Association during normal business hours.

Section 5: Financial Statements. The Association shall provide any Mortgagee or Insurer who submits a written request a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Mortgagee or Insurer requests it, in which case the Mortgagee or Insurer shall bear the cost of the audit.

Section 6: Enforcement. The provisions of this Article are for the benefit of Mortgagees and Insurers and their successors and may be enforced by any of them by any available means at law or in equity.

Section 7: Attendance at Meetings. Any representative of a Mortgagee or Insurer may attend and address any meeting which an Owner may attend.

Section 8: Appointment of Trustee. In the event of damage, destruction, or condemnation of all or a portion of the Common Elements, any Mortgagee may require that such proceeds be payable to a trustee. Such trustee may be required to be a corporate trustee licensed by the State of Colorado. Proceeds will thereafter be distributed pursuant to the Act or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board, acting by majority vote through the president, may act as trustee.

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**ARTICLE IX. LIMITED COMMON ELEMENTS**

Section 1: Limited Common Elements. "Limited Common Elements" means a portion of the Common Elements designated in this Declaration or on the Plat and Map or by the Act for the exclusive use of one (1) or more, but fewer than all, of the Units. In addition to those portions of the Common Elements described in §38-33.3-202(1)(b) and (1)(d) of the Act, the following are designated as Limited Common Elements: heating, air-conditioning, and hot water tanks and heaters which serve only one (1) Unit.

Section 2: Allocation of Reserved Limited Common Elements. Portions of the Common Elements may be designated on the Plat and Map as "Common Elements which may be allocated as Limited Common Elements." The Declarant reserves the right to allocate specified areas which constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which the specified areas shall become appurtenant. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of §38-33.3-208 of the Act by making such an allocation in a recorded instrument or in the deed to the Unit to which such Limited Common Element area shall be appurtenant or by recording an appropriate amendment or supplement to this Declaration. Such allocation by the Declarant may be to Units owned by the Declarant. The right of allocation pursuant to this Section shall pass from the Declarant to the Executive Board, and the Declarant may not thereafter exercise any such right of allocation subsequent to the date which is one (1) year after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of §38-33.3-303(5) of the Act.

Section 3: Allocation of Specified Common Elements. The Executive Board may designate part of the Common Elements from time to time for use by less than all of the Unit Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portion of the Common Elements.

Section 4: Expense Allocation. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit to which the Limited Common Element is assigned.



**ARTICLE X. RESTRICTIVE COVENANTS AND OBLIGATIONS**

Section 1: No Improvements on Exterior of Unit. Except for those improvements erected or installed by the Declarant, no exterior additions to, exterior alterations of, or exterior decoration of a Unit shall be commenced, erected or maintained without the prior written approval of the Association.

Section 2: No Hazardous Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of insurance on any other Unit, or any part thereof, or an increase on the rate of insurance on any other Unit, or any part thereof, over what the Association, but for such activity, would pay, without the prior written approval of the Association. In the event the Association, in its sole and absolute discretion, elects to consent to any such activity resulting in an increase of the rate of insurance on any other Units, the Association may require that the responsible Unit Owner agree in writing to the prompt payment of such increase in the insurance premium.

Section 3: No Violation of Laws. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would be in violation of any protective covenants, restrictions or limitations affecting any Unit or in violation of any statute, rule, ordinance, regulation, zoning resolution, permit or otherwise imposed requirement of any governmental authority.

Section 4: Damage to Common Elements. No damage to or waste of the Common Elements, or any part thereof, shall be committed by an Owner or by any guest, invitee or contract purchaser of an Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from such damage or waste caused by him, or his guests, invitees or contract purchasers.

Section 5: Limitations on Leasing. The Owner of a Unit shall have the right to lease his Unit subject to the following conditions:

(a) All leases shall be in writing.

(b) All leases shall provide that the terms of the lease and the lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration and the provisions of the Articles of Incorporation and Bylaws of the Association.

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Any failure by the lessee to comply therewith shall be a default under the lease. Any Owner who leases his Unit shall, within ten (10) days after the execution of such lease, forward a copy of the same to the Association or the Association's manager.

Section 6: Rules and Regulations. The Association, through the Executive Board, may adopt reasonable rules and regulations not inconsistent with this Declaration governing the use of the Common Elements.

#### **ARTICLE XI. GENERAL PROVISIONS**

Section 1: Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.

Section 2: Duration. This Declaration shall run with the land, shall be binding upon all persons owning Units and any persons hereafter acquiring said Units, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 3: Amendment. Except as otherwise provided in this Declaration, this Declaration may be altered or amended at any time by a vote of sixty-seven percent (67%) or more of the votes entitled to be cast by all Owners through a duly written and recorded instrument.

Section 4: Management of the Common Areas. The Association may obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine

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to be necessary or desirable for the proper management, operation, and maintenance of the Common Elements; provided, however, that any contract in regard to the hiring or employing of such a managing agent or other personnel shall not be for a term in excess of three (3) years and shall provide that the same shall terminate on sixty (60) days' written notice, with or without cause, and without payment of any termination fee.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

HISTORIC LINDEN, LLC, a Colorado  
Limited Liability Company

By *[Signature]*  
Mitchell M. Morgan, Manager

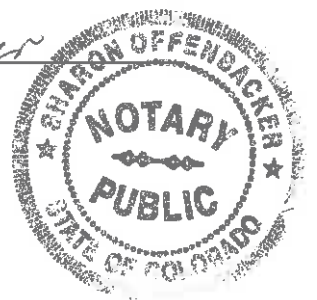
STATE OF COLORADO    )  
                                  )   ss.  
COUNTY OF LARIMER    )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 28<sup>TH</sup> day of April, 1995, by Mitchell M. Morgan, as Manager of HISTORIC LINDEN, LLC, a Colorado Limited Liability Company.

Witness my hand and official seal.

My commission expires: August 31, 1998.

*Sharon Offbacher*  
Notary Public



**RATIFICATION**

The undersigned, having a Security Interest in all or any part of the Real Estate described on **Exhibit "A"** attached hereto and incorporated herein by reference, hereby approves, ratifies, confirms and consents to the foregoing Condominium Declaration for Historic Linden Condominiums.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed by its Commercial this 28<sup>th</sup> day of April, 1995.  
Loan Officer

KEY BANK OF COLORADO

By *[Signature]*  
(Name/Title) Commercial Loan Officer

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of April, 1995, by Howard C. Wigert, as Commercial Loan Officer, of KEY BANK OF COLORADO.

Witness my hand and official seal.

My commission expires: August 31, 1998.

*[Signature]*  
Notary Public



EXHIBIT "A" ATTACHED TO AND MADE A PART OF CONDOMINIUM DECLARATION  
FOR HISTORIC LINDEN CONDOMINIUMS

Legal Description of Real Estate

✓ A portion of Lots 2 and 4, Block 13, Town of Fort Collins, Larimer County, Colorado. Being more particularly described as follows:

Considering the Northwesterly Right-of-way line of Linden Street as bearing N 41°10' E as determined by a cross chiseled on 7.0' offsets from said Right-of-way and nails set in concrete on 7.0' offsets from said Right-of-way, and with all bearings contained herein relative thereto.

BEGINNING at the Southeast corner of said Lot 2, said point also being the most Southerly corner of said Block 13; thence N 41°10' E 75.36 feet; thence N 48°41'45" W 100.00 feet; thence S 41°10' W 75.60 feet; thence S 48°50' E 100.00 feet to the BEGINNING. ✓

EXCEPT THE FOLLOWING DESCRIBED PARCEL:

✓ A portion of Lot 2 and Lot 4, Block 13 Town of Ft. Collins, Larimer County, Colorado. Being more particularly described as follows:

Considering the Northwesterly Right-of-way line of Linden Street as bearing N 41°10' E as determined by a cross chiseled on 7.0' offsets from said Right-of-way and nails set in concrete on 7.0' offsets from said Right-of-way and with all bearings contained herein relative thereto.

Commencing at the most Southerly corner of said Lot 2; thence N 41°10' E along the Southeasterly line of said Lot 2 7.8 feet to the TRUE POINT OF BEGINNING; thence continuing along said line N 41°10' E 67.5 feet; thence departing from said line N 48°50' W 1.6 feet; thence S 41°10' W 7.4 feet; thence N 71°05' W 2.7 feet; thence S 41°10' W 6.3 feet; thence S 26°35' E 2.7 feet; thence S 41°10' W 21.0 feet; thence N 71°05' W 2.7 feet; thence S 41°10' W 6.3 feet; thence S 26°35' E

2.7 feet; thence S 41°10' W 22.2 feet; thence S 86°10' W 9.2 feet; thence N 48°50' W 53.4 feet; thence N 18°55' E 2.6 feet; thence N 48°50' W 4.8 feet; thence S 63°25' W 2.6 feet; thence N 48°50' W 32.2 feet; thence S 41°10' W 1.6 feet to the Southwesterly line of said Lot 4; thence along said line S 48°50' E 50.5 feet more or less to the most Southerly point of said Lot 4; thence departing from said line and along the most Southerly line of said Lot 2 S 48°50' E 42.2 feet; thence departing from said line N 86°10' E 11.0 feet more or less to the TRUE POINT OF BEGINNING, Together with an easement for the maintenance of the Linden Hotel facade as more fully described in that certain Agreement recorded April 27, 1994 at Reception No. 94036314, COUNTY OF LARIMER, STATE OF COLORADO. ✓

**AND**

TOGETHER WITH Declarant's reversionary interest in and to the facade improvements as more fully described in that certain "Deed for Conveyance of Facade and Grant of Maintenance Easement for Facade Regarding the Linden Hotel" dated March 8, 1995, and recorded March 27, 1995, at Reception No. 95016796 of the Larimer County, Colorado records, which facade improvements will revert to the owner of the above-described property upon the expiration of the thirty (30) year term referred to therein.

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EXHIBIT "B" ATTACHED TO AND MADE A PART OF CONDOMINIUM DECLARATION  
FOR HISTORIC LINDEN CONDOMINIUMS

Table of Interests

<u>Unit No.</u>	<u>Percentage share of Common Elements</u>	<u>Percentage share of Common Expenses</u>	<u>Vote in the affairs of Association</u>
Unit 1	41.31%	41.31%	5,670
Unit 2	35.85%	35.85%	4,920
Unit 3	22.84%	22.84%	3,135
	----- 100.00%	----- 100.00%	----- 13,725

EXHIBIT "C" ATTACHED TO AND MADE A PART OF CONDOMINIUM DECLARATION  
FOR HISTORIC LINDEN CONDOMINIUMS

Easements and Licenses

Easements and licenses appurtenant to the Common Interest Community which are not depicted upon the Plat and Map are as follows:

1. Terms, conditions, provisions and obligations of that certain Agreement between Historic Linden, LLC, a Limited Liability Company, with The Fort Collins Downtown Development Authority recorded April 27, 1994, at Reception No. 94036314 of the Larimer County, Colorado records.
2. Terms, provisions and reservations as contained in that certain Deed for Conveyance of Facade and Grant of Maintenance Easement for Facade Regarding the Linden Hotel from Historic Linden, LLC, a Limited Liability Company, to The Fort Collins Downtown Development Authority, a Body Corporate and Politic, dated March 8, 1995, and recorded March 27, 1995, at Reception No. 95016796 of the Larimer County, Colorado records.