

SEP 20 1996

RCPTN # 96063359 08/30/96 14:27:00 # PAGES - 11 FEE - \$56.00
M RODENBERGER RECORDER, LARIMER COUNTY CO STATE DOC FEE - \$.00

ELEVATOR, STAIRWAY AND LOBBY EASEMENT AGREEMENT

RET.

THIS ELEVATOR, STAIRWAY AND LOBBY EASEMENT AGREEMENT ("Agreement") is made and entered into this 28th day of August, 1996, by and between HISTORIC LINDEN CONDOMINIUM ASSOCIATION, a Colorado Non-Profit Corporation, the address of which, for purposes of this Agreement, is 760 Whalers Way, Suite C200, Fort Collins, Colorado 80525 ("Association"), and THE LAST SALVATION, LLC, a Colorado Limited Liability Company, the address of which, for purposes of this Agreement, is 760 Whalers Way, Suite C200, Fort Collins, Colorado 80525 ("LLC").

ARTICLE I

RECITALS

Section 1.01: The Association desires to establish a non-exclusive easement within a portion of its general common elements consisting of the elevator, stairway and lobby located on the following described real property ("Linden Property"):

HISTORIC LINDEN CONDOMINIUMS, in accordance with the Plat and Map of Historic Linden Condominiums recorded on April 28, 1995, at Reception No. 95023913 and subject to the Condominium Declaration for Historic Linden Condominiums recorded on April 28, 1995, at Reception No. 95023914 of the Larimer County, Colorado records.

Section 1.02: The LLC desires to acquire an elevator, stairway and lobby easement for the purpose of providing ingress and egress to and from the real property owned by the LLC, which real property is legally described as follows ("Loomis Property"):

A portion of Lots 2 and 4, Block 13, in the City of Fort Collins, Colorado, described as follows: BEGINNING at a point on Linden Street, 75 feet Northeast from the most Southerly corner of said Lot 2, thence Northeasterly along line of Linden Street 115 feet, thence Northwesterly parallel with Walnut Street 100 feet, thence Southwesterly parallel with Linden Street 115 feet, thence Southeasterly parallel with Walnut Street 100 feet to the POINT OF BEGINNING, EXCEPT

that portion conveyed by Deed recorded February 28, 1986 at Reception No. 86010395, COUNTY OF LARIMER, STATE OF COLORADO.

Also known as 213-217 Linden Street, Fort Collins, Colorado.

Section 1.03: The parties desire to establish a non-exclusive elevator, stairway and lobby easement over a portion of the Linden Property, subject to the covenants, conditions, restrictions and reservations hereinafter set forth.

Section 1.04: The parties further desire to provide for maintenance, repair and replacement of the elevator, stairway and lobby areas within the Linden Property, subject to the covenants, conditions, restrictions and reservations hereinafter set forth.

ARTICLE II

DEFINITIONS

Section 2.01: General. This Article II defines words and phrases which, as used in this Agreement, have the meanings set forth below. Other terms in this Agreement may be defined in specific provisions of the Agreement and shall have the meanings assigned by such definition. Defined words and phrases are indicated in this Agreement by capitalizing the first letter of the defined word or of each word in a defined phrase.

Section 2.02: "Access Easement" shall mean and refer to that portion of the Easement Area designated for access to and from the Loomis Property as more fully depicted upon the Map of the Linden Property.

Section 2.03: "Assessment" shall mean and refer to the assessment levied, charged or assessed against the Owner of the Loomis Property in accordance with the provisions of this Agreement.

Section 2.04: "Common Expense" shall mean and refer to the expenses of inspection, maintenance, repair and replacement of the elevator, stairway and lobby and improvements thereon located within the Easement Area and the acquisition of casualty and liability insurance as set forth in Sections 3.02 and 3.03 hereinafter, respectively.

Section 2.05: "Condominium Unit(s)" shall mean and refer to one (1) or more condominium units located on the Linden Property.

Section 2.06: "Easement Area" shall mean and refer to that portion of the Linden Property designated on the Map of the Linden

3
Property as the elevator, stairway and lobby (but excluding the restrooms) located on all three (3) floors in the southeasterly corner of the Linden Property.

Section 2.07: "First Mortgage" shall mean and refer to the Mortgage having first and paramount priority under applicable Colorado law.

Section 2.08: "Map of the Linden Property" shall mean and refer to the Map of the Linden Property attached hereto as Exhibit "A" and incorporated herein by reference which depicts the elevator, stairway and lobby located on all three (3) floors in the southeasterly corner of the Linden Property.

Section 2.09: "Mortgage" shall mean and refer to any mortgage, deed of trust or other security instrument recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and by which the Linden Property or the Loomis Property, or any part thereof, is encumbered.

Section 2.10: "Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary in any Mortgage under which the interest of an Owner in the Linden Property or the Loomis Property, or any part thereof, is encumbered, or any successor to the interest of any such person under such Mortgage.

Section 2.11: "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to the Loomis Property, and, where appropriate, the owner of a Condominium Unit on the Linden Property, but excluding those having such interest merely as security for performance of any obligations, provided that a purchaser at foreclosure sale or a public trustee's sale shall be deemed an Owner upon issuance of a public trustee's deed for the Loomis Property or a Condominium Unit on the Linden Property.

ARTICLE III

DECLARATION OF EASEMENT

Section 3.01: Declaration of Access Easement. Subject to all existing easements, reservations, restrictions, covenants, agreements and encumbrances of record, the Association does hereby create, declare and establish a perpetual, non-exclusive easement on, in, over, across and upon that portion of the Easement Area designated on the Map of the Linden Property for pedestrian ingress, egress and access to and from the Loomis Property and the public or private sidewalks, streets or rights-of-way adjacent to the Linden Property and the Easement Area in the southeast corner of the Linden Property. Said Access Easement shall be for the

benefit of the Owners of the Loomis Property and its/their heirs, administrators, successors and assigns, as well as their respective employees, tenants, licensees and business invitees.

Section 3.02: Repair and Maintenance of Easement Area. The Association, its successors and assigns, shall repair and maintain the entire Easement Area in such a manner as is reasonably necessary and appropriate for the proper use thereof for pedestrian ingress, egress and access within, over and across the Easement Area for the benefit of the Linden Property and the Loomis Property. Such repair and maintenance shall be completed in a first-class manner as reasonably determined by the Association pursuant to the terms of that certain Condominium Declaration for Historic Linden Condominiums dated April 28, 1995, and recorded April 28, 1995, at Reception No. 95023914 of the Larimer County, Colorado records, the provisions of the Colorado Common Interest Ownership Act and the Colorado Nonprofit Corporation Act. Such repair and maintenance shall include, but is not necessarily limited to, general maintenance, repair, replacement and cleaning; maintenance and replacement of the elevator equipment and lobby furnishings; service contracts and provision for personnel or independent contractors to implement the foregoing services. In the event of failure on the part of the Association to reasonably maintain and repair the Easement Area pursuant to this Agreement, the Owner of the Loomis Property shall have the right, but not the obligation, to maintain and repair the Easement Area, provided that twenty (20) days' prior written notice is given to the Association of such intended action.

Section 3.03: Insurance. Unless obtained by the Association and charged as a "Common Expense," the Association and the Owner of the Loomis Property, its/their respective heirs, administrators, successors and assigns, shall be responsible for securing such general public liability insurance, including insurance from claims against personal injury, death or property damage occurring in, on or about the Easement Area as the Association and/or Owner of the Loomis Property desires, at the sole cost and expense of such party. Any casualty insurance deemed necessary with respect to the Easement Area by the Association on behalf of the Linden Property shall be obtained by the Association and the cost of such casualty insurance shall be deemed a "Common Expense" for purposes of this Agreement.

ARTICLE IV

PAYMENT OF COMMON EXPENSES AND LIEN FOR NON-PAYMENT

Section 4.01: Payment of Common Expenses. The Association shall be responsible for arranging for the payment of all Common Expenses in connection with the maintenance and repair of the Easement Area and securing casualty insurance for the Easement Area. The Association shall from time to time, in its discretion,

submit a notice of Assessment to the Owner of the Loomis Property requesting payment of a pro rata share of the Common Expenses previously incurred or to be incurred in connection with the Easement Area in the immediate future as determined in accordance with this Section 4.01.

The Owner of the Loomis Property shall have a period of fifteen (15) days after the issuance of the notice of Assessment within which to remit to the Association its/their share of such Common Expenses incurred by the Association in accordance with the terms of this Agreement.

Except as otherwise expressly provided herein, all Common Expenses shall be paid equally by the Association and the Owner of the Loomis Property and its/their heirs, administrators, successors and assigns, such that each party shall be responsible for payment of fifty percent (50%) ("Proportionate Share") of the total cost of such Common Expenses.

Section 4.02: Effect of Non-Payment of Assessment, Remedies of Association. If the Owner of the Loomis Property shall fail or refuse to pay any Assessment within fifteen (15) days after the date such Assessment shall become due ("Defaulting Owner"), the amount thereof shall constitute a lien upon the Loomis Property; and upon the recording of notice thereof by the Association, such lien shall be constituted upon the Loomis Property prior to all other liens and encumbrances, recorded or unrecorded, except (i) taxes, special assessments and special taxes thereon or thereafter levied by any political subdivision or municipal corporation of this state and any other state or federal taxes which by law are a lien on the interest of the Defaulting Owner prior to pre-existing recorded encumbrances thereon, and (ii) the lien of a First Mortgage of record.

Section 4.03: Evidence of Enforcement of Lien. To evidence the lien granted in Section 4.02 above for unpaid Assessments, the Association shall prepare a written notice setting forth the amount, name of the Defaulting Owner and a legal description of the Loomis Property. Such notice shall be signed on behalf of the Association and shall be recorded in the office of the Clerk and Recorder of Larimer County, Colorado. Such lien shall attach from the date of recording in the office of the Clerk and Recorder and may be enforced by foreclosure by the Association against the Loomis Property in like manner as mortgages upon real property. In any such foreclosure, the Defaulting Owner shall be required to pay all of the costs and expenses of such proceedings, the costs, expenses and attorneys' fees for filing the notice of lien and all reasonable attorneys' fees incurred in connection with such foreclosure. In addition, any unpaid Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such Assessment was due. The Defaulting Owner shall also be required to pay any Assessment due and owing during the period of

foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the right to bid upon the Loomis Property in the event of foreclosure at the foreclosure sale and to acquire, hold, lease, mortgage and convey the same. Any encumbrancer holding a lien on the Loomis Property may, but shall not be required to, pay any unpaid Assessments due and owing with respect thereto; and upon such payment, such encumbrancer shall have a lien on the Loomis Property for the amounts paid of the same rank as a lien of his or its encumbrance.

Section 4.04: Rights of Owner of Loomis Property. As stated in Section 3.02 above, if the Association shall fail to properly maintain the Easement Area, then the Owner of the Loomis Property shall have the right, but not the obligation, to maintain and repair the Easement Area and/or to purchase the casualty insurance; provided that the Owner of the Loomis Property shall give twenty (20) days' prior written notice to the Association of its intention to do so. Thereupon, the Owner of the Loomis Property may expend such monies as shall be required to properly maintain the Easement Area and purchase casualty insurance and the Association shall, within fifteen (15) days after notice of Assessment given to the Association, be responsible for the payment of its Proportionate Share (e.g., fifty percent [50%]) of the total Common Expenses expended by the Owner of the Loomis Property in connection with such activities. In the event the Association shall fail or refuse to pay its Proportionate Share of such Common Expenses, then, in such event, the Owner of the Loomis Property may require that the matter be submitted to binding arbitration in which case each party shall select one (1) arbitrator and the two (2) arbitrators shall select a third arbitrator. A decision of a majority of the three (3) arbitrators shall be final and binding upon both parties. Arbitration shall be conducted pursuant to the Uniform Arbitration Act of 1975 (C.R.S. §13-22-201, et seq.) and, in the event the Owner of the Loomis Property shall be deemed to be entitled to reimbursement for the Common Expenses, the Owner of the Loomis Property shall have all of the remedies set forth in this Article IV for the collection of the Assessment against the Association.

ARTICLE V

ADOPTION OF RULES AND REGULATIONS

The Association shall have the right to establish reasonable rules and regulations relating to the utilization of the Easement Area by the Owners of Condominium Units on the Linden Property and the Owners of the Loomis Property and its/their respective tenants, employees, licensees and business invitees. No such rule or regulation shall unreasonably restrict or impede the use of the Easement Area by any such individuals or entities and its/their tenants, employees, licensees and business invitees.

ARTICLE VI

AMENDMENT, ABANDONMENT AND TERMINATION OF EASEMENT

This Agreement and the easements created herein may be amended, vacated, released, abandoned or terminated in whole or in part by instrument executed by the Association and all Owners of the Loomis Property and by the holders of all First Mortgages encumbering any portion of the Loomis Property and the Condominium Units on the Linden Property. Any such instrument must be recorded in the office of the Clerk and Recorder of Larimer County, Colorado, to be effective, valid and binding.

ARTICLE VII

ATTORNEYS' FEES

In the event of any foreclosure action, litigation or arbitration arising pursuant to this Agreement, the prevailing Owner shall be entitled to recover its costs and attorneys' fees

ARTICLE VIII

BENEFITS AND BURDENS

Section 8.01: Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Association and the Owners of the Linden Property and the Loomis Property, and its/their respective heirs, administrators, successors, and assigns.

Section 8.02: Covenant. To the extent necessary to give effect to the declaration herein made, this Agreement shall constitute a restrictive covenant against the Linden Property and the Loomis Property and the Linden Property and the Loomis Property shall hereafter be held, sold, conveyed, transferred, leased, subleased or occupied subject to the terms, conditions, covenants and limitations set forth herein which shall run with the Linden Property and the Loomis Property and be binding upon all parties having any right, title or interest in the Linden Property or the Loomis Property, or any portion thereof.

EXHIBIT "A", PART 1 OF 3, ATTACHED TO AND MADE A PART OF ELEVATOR, STAIRWAY AND LOBBY EASEMENT AGREEMENT BY AND BETWEEN HISTORIC LINDEN CONDOMINIUM ASSOCIATION ("ASSOCIATION") AND THE LAST SALVATION, LLC ("LLC")

Map of Linden Property
1st Floor



