

FHA FORM NO. 3276-A
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(For use in Sec. 234)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

ENABLING DECLARATION

ESTABLISHING A PLAN FOR

CONDOMINIUM OWNERSHIP

WHEREAS, _____, (hereinafter referred to as "Grantor") owns certain real property herein described; and

WHEREAS, said Grantor has improved said property by constructing thereon a _____ unit multifamily structure known as _____, said structure having been constructed in accordance with plans and specifications prepared by _____, said plans being on record in the _____ of the City of _____ State of _____, and styled _____, FHA Project No. _____, and consisting of sheets _____ through _____ through _____, etc., all inclusive; and

WHEREAS, said Grantor hereby establishes by this declaration a plan for the individual ownership of the real property estates consisting of the area or space contained in each of the apartment units in said multifamily structure, 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 herein as the "common areas and facilities."

NOW, THEREFORE, said Grantor, the fee owner of the following described real property, to-wit:

(Land description)

hereby makes the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon, consisting of a _____ unit multifamily structure and appurtenances, may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding on said Grantor, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

- A. Said Grantor, in order to establish a plan of condominium ownership for the above-described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates:

1. The _____ separately designated and legally described freehold estates consisting of the spaces or areas, being the area or space contained in the perimeter walls of each of the _____ apartment units in said multifamily structure constructed on said property, said spaces being defined, and referred to herein, as "apartment spaces."
 2. A freehold estate consisting of the remaining portion of the real property is described and referred to herein as the "common areas and facilities," which definition includes the multifamily structure and the property upon which it is located, and specifically includes, but is not limited to, the land, roof, main walls, slabs, elevator, elevator shaft, staircases, lobbies, halls, parking spaces, storage spaces, community and commercial facilities, swimming pool, pumps, water tank, trees, pavement, balconies, pipes, wires, conduits, air conditioners and ducts, or other public utility lines.
- B. For the purpose of this declaration, the ownership of each "apartment space" shall include the respective undivided interest in the common areas and facilities specified and established in "E" hereof, and each "apartment space" together with the undivided interest is defined and hereinafter referred to as "family unit."
 - C. A portion of the "common areas and facilities" is hereby set aside and allocated for the restricted use of the respective "apartment spaces," as is hereinafter designated, and as shown on survey attached hereto, and said areas shall be known as "restricted common areas and facilities."
 - D. The _____ individual "apartment spaces" hereby established and which shall be individually conveyed are described as follows:

(Legal description of apartment spaces)
 - E. The undivided interest in the "common areas and facilities" hereby established and which shall be conveyed with each respective "apartment space" is as follows:

(Apartment number - Percentage of undivided interest)

The above respective undivided interests established and to be conveyed with the respective "apartment spaces" as indicated above, cannot be changed, and said Grantor, its successors and assigns, and grantees, covenant and agree that the undivided interests in the "common areas and facilities" and the fee titles to the respective "apartment spaces" conveyed therewith, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective "apartment space" even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the "apartment space."

- F. The proportionate shares of the separate owners of the respective "family units" in the profits and common expenses in the "common areas and facilities," as well as their proportionate representation for voting purposes in the Association of Owners, is based on the proportionate value that each of the "family units," referred to herein, bears to the value of \$ _____,* which represents the total value of all of the "family units." The value of the respective "family units," their respective interests for voting purposes, and their proportionate shares in the common profits and expenses shall be as follows:

(Family unit number - value* - Proportionate representation for voting and share in common profits and expenses)

- G. The "restricted common areas and facilities" allocated for the restricted uses of the respective "family units" are as follows:

FAMILY UNIT 1: That portion of the parking area designated as parking space No. 1; storage space No. 1; together with balcony adjoining the "apartment space" associated with family unit 1 on the south. Said restricted areas are further described, located, and shown on survey attached hereto.**

- H. That attached hereto and made a part hereof as Exhibit "A" is a survey consisting of _____ sheets as prepared by _____, dated _____.

- I. Said Grantor, its successors and assigns, by this declaration, and all future owners of the "family units," by their acceptance of their deeds, covenant and agree as follows:

1. That the "common areas and facilities" shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium.
2. That the "apartment spaces" shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants and social guests and for no other purpose.
3. The owner of the respective "apartment spaces" shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective "apartment space," nor shall said owner be deemed to own pipes, wires, conduits or other public utility lines running through said respective "apartment spaces" which are utilized for, or serve more than one "apartment space," except as tenants in common with the other "family unit" owners as heretofore provided in "E". Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective "apartment space," and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.
4. The owners of the respective "apartment spaces" agree that if any portion of the "common areas and facilities" encroaches upon the "apartment spaces," a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the multifamily structure is partially or totally destroyed, and then rebuilt, the owners of "apartment spaces" agree that minor encroachment of parts of the "common areas and facilities" due to construction shall be permitted and that valid easement for said encroachment and the maintenance thereof shall exist.

* Value to correspond with FHA appraised value.

** Descriptive material for guidance only; conform to actual facts.

5. That an owner of a "family unit" shall automatically, upon becoming the owner of a "family unit or units," be a member of _____ hereinafter referred to as the "Association," and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.
 6. That the owners of "family units" covenant and agree that the administration of the condominium shall be in accordance with the provisions of this Declaration, the By-Laws of the Association which are made a part hereof and attached as Exhibit "B," and shall be subject to the terms of a Regulatory Agreement executed by the Association and the Commissioner of the Federal Housing Administration, which Agreement is made a part hereof and is attached as Exhibit "C."
 7. That each owner, tenant or occupant of a "family unit" shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, and the Regulatory Agreement, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.
 8. That this Declaration shall not be revoked or any of the provisions herein amended unless all of the owners and the mortgagees of all of the mortgages covering the "family units" unanimously agree to such revocation or amendment by duly recorded instruments.
 9. That no owner of a "family unit" may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his "family unit."
- J. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any family unit shall constitute a lien on such family unit prior to all other liens except only (1) tax liens on the family unit in favor of any assessing unit and special district, and (2) all sums unpaid on the first mortgage of record.* Such lien may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the owners of the family units, in like manner as a mortgage of real property. In any such foreclosure the family unit owner shall be required to pay a reasonable rental for the family unit, if so provided in the by-laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the owners of the family units, shall have power, unless prohibited herein, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.
- K. Where the mortgagee of a first mortgage of record or other purchaser of a family unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the family units including such acquirer, his successors and assigns.
- L. The respective "family units" shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants of the "family unit" are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the owners of the respective "family units" shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the By-Laws and Regulatory Agreement attached hereto.
- * The list of liens having priority over the assessments by the Association for common expenses may be expanded provided the approval of FHA is obtained.

- M. In the event the property subject to this Enabling Declaration is totally or substantially damaged or destroyed, the repair, reconstruction, or disposition of the property shall be as provided by _____.*
- N. In a voluntary conveyance of a family unit the grantee of the unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the family unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.
- O. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the _____,** this Declaration or in the By-Laws, shall be deemed to be binding on all owners of family units, their successors and assigns.
- P. That the Board of Directors of the Association of Owners, or the Management Agent, or Manager shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering family units but without prejudice to the right of the owner of a family unit to obtain individual family unit insurance.
- Q. That insurance premiums for any blanket insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association of Owners; and that such payments shall be held in a separate escrow account of the Association of Owners and used solely for the payment of the blanket property insurance premiums as such premiums become due.
- R. That so long as said Grantor, its successors and assigns, owns one or more of the family units established and described herein, said Grantor, its successors and assigns shall be subject to the provisions of this Declaration and of Exhibits "A", "B", and "C" attached hereto; and said Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association, the members of such association and their successors in interest, as their interests may appear, by reason of the establishment of the condominium.
- S. The terms "Declaration" and "Condominium Ownership" as used herein shall mean and include the terms "Master Deed" and "Apartment Ownership" respectively.

(Execution and Acknowledgement in Accordance with Requirements of Jurisdiction)

* Insert applicable statutory reference; or, in the absence of statute, insert the following: "an Agreement approved by _____ % of the votes."

** Identify state law establishing family unit ownership, if any.