

CONDOMINIUM DECLARATION

FOR

FRANKLIN STREET APARTMENTS

(A Condominium)

This Declaration made this 27<sup>th</sup> day of November, 1978, by SYSTEMATICS CORPORATION, a Colorado corporation, and STEVE P. FOSTER, both hereinafter referred to as "Declarant."

1. Ownership of Property and Submission of Property to Condominium Ownership.

a. The Declarant is the owner of the real property situate in the County of Mesa, State of Colorado, which property is described on the attached Exhibit "A," which by this reference is made a part hereof.

b. The Declarant desires to establish a condominium complex under the Condominium Ownership Act of the State of Colorado.

c. The Declarant has constructed five buildings and other improvements appurtenant thereto on the property which shall constitute 74 separately designated condominium units.

d. The Declarant does hereby establish a plan for the ownership in fee simple of real property estates consisting of the area or space contained in each of the apartment units in the buildings, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all the remaining real property hereinafter defined and referred to as the "General Common Elements."

e. The Declarant does hereby publish and declare that the following terms, conditions, easements, 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, heirs and personal representatives and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, personal representatives, or assigns.

2. Definitions. Unless the context shall expressly provide otherwise, the following definitions shall apply:

a. "Apartment," "Apartment Unit," or "Unit" means an individual air space which is contained within the unfinished perimeter walls, floors, and ceilings of a Unit in the buildings as shown on the Map to be filed for record, together with all fixtures and improvements therein contained, but not including any of the structural components of the building, if any, within a Unit.

b. "Condominium Unit" means a Unit together with the undivided interest in the General and limited Common elements appurtenant to each such Unit.

c. "Owner" means a person, firm, corporation, partnership, association or other entity, or any combination thereof, owning one or more Condominium Units; the term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

d. "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium Unit or any part thereof is encumbered.

e. "Mortgagee" means any person named as Mortgagee or beneficiary under any mortgage under which the interest of any Owner is encumbered.

f. "General Common Elements" means and includes:

- (1) The land on which the buildings are located;
- (2) The foundations, columns, girders, beams, supports, main walls, roofs, balconies, patios, decks, halls, corridors, lobbies, stairs, stairways, entrances and exists of the buildings;
- (3) The yards, parking areas, and storage spaces;
- (4) The installations consisting of the equipment and materials making up the central services such as tanks, light, gas, hot and cold water, heating, ventilating and air conditioning and, in general, all apparatus and installations existing for common use;
- (5) Such enclosed air spaces as are provided for community or common use;
- (6) Building "E" as shown on the Condominium Map;
- (7) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

g. "Limited Common Elements" means those parts of the General Common Elements reserved for the exclusive use of the Owner of a Condominium Unit.

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

i. "Project" or "Condominium Project" means all of the land and improvements initially and subsequently submitted to this Declaration.

j. "Common Expense" means and includes:

- (1) All sums lawfully assessed against the General Common Elements;
- (2) Expenses of administration and management, maintenance, repair or replacement of the General Common Elements;

(3) Expenses declared Common Expenses by the Unit Owners.

k. "Association of Unit Owners" or "Association" means FRANKLIN STREET APARTMENTS HOME OWNERS ASSOCIATION, INC., a Colorado Non-Profit corporation, the Certificate of Incorporation and By-laws of which shall govern the administration of this Condominium Complex, and the members of which shall be all of the Owners of the Condominium Units of this Condominium Complex.

l. "Map" or "Plans" means and includes the engineering survey of the land locating thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part or all of the improvements.

m. "Building" means the building improvements comprising a part of the property.

3. Condominium Map. The Map shall be filed for record prior to the first conveyance of any Condominium Unit. Such Map shall consist of and set forth (1) the legal description of the surface of the land; (2) the linear measurements and location, with reference to the exterior boundaries of the land, of the Buildings and all other improvements built or to be built on said land by Declarant; (3) floor plans and elevation plans of the Buildings built or to be built thereon showing the location, the Apartment designation and the linear dimensions of each Apartment Unit, and the designation of the Limited Common Elements; (4) the elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane, and the linear measurements showing the thickness of the perimeter walls.

The map or any amended map shall contain a verified statement of a registered professional engineer certifying that the map filed therewith substantially depicts the location and the horizontal and vertical measurements of the buildings, the units, the unit designations, the dimensions of the units, the elevations of the finished floors and ceilings as constructed and the building symbols.

In interpreting the Map, the existing physical boundaries of each Unit as constructed shall be conclusively presumed to be its boundaries.

Declarant reserves the right to amend the Map, from time to time, to conform same to the actual physical location of the constructed improvements and to any changes, modifications or alterations.

4. Division of Property Into Condominium Units. The real property and improvements constructed thereon are hereby divided into seventy-four (74) separate fee simple estates, each such estate consisting of one Unit together with an appurtenant undivided interest in and to the General Common Elements, as provided in Exhibit "B" which by this reference is made a part hereof. The General Common Elements shall be held in common by the Owners thereof. Each Condominium Unit is described on the attached Exhibit "B" and shall be identified on the Map by the number as shown on said Exhibit "B."

5. Limited Common Elements. A portion of the General Common Elements is set aside and reserved for the exclusive use of individual Owners, such areas being the Limited Common Elements.

The Limited Common Elements reserved for the exclusive use of the individual Owners consist of each balcony and each patio area adjoining an Apartment Unit and associated therewith, as the same are shown on the Map. Each balcony and each patio area adjoining and associated with an Apartment shall, without further reference, be the Limited Common Elements associated and used with such Apartment Unit. All Limited Common Elements shall be used in connection with the particular Apartment Unit, to the exclusion of the use thereof by the other Owners except by invitation.

6. Description of a Condominium Unit. Every deed, lease, mortgage, trust deed, will, or other instrument may legally describe a Condominium Unit as follows:

Condominium Unit \_\_\_\_\_ in Building \_\_\_\_\_ of Franklin Street Apartments, as shown on Condominium Map filed under Reception No. 1177886 as defined and described in Condominium Declaration recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, all being of the records of the Clerk and Recorder of Mesa County, Colorado. *Filed 0-70*

Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the General Common Elements and the Limited Common Elements reserved for use with such Apartment Unit, and also to convey the right of ingress and egress to and from said Apartment Unit and the Limited Common Elements adjacent thereto.

7. Inseparability of a Condominium Unit. Each Apartment and the undivided interest in the General Common Elements and the Limited Common Elements, if any, appurtenant thereto shall be inseparable and may be conveyed, leased, encumbered, devised, or inherited only as a Condominium Unit.

8. Separate Assessment and Taxation-Notice to Assessor. Declarant shall give written notice to the assessor of the creation of condominium ownership of this property, as is provided by law, so that each Apartment Unit and its percentage of undivided interest in the General Common Elements shall be deemed a separate parcel and subject to separate assessments and taxation.

9. 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.

10. Non-Partitionability of General Common Elements. The General Common Elements shall be owned in common by all of the Owners of the Apartment Units and shall remain undivided, and no Owner shall bring any action for partition or division of the General Common Elements. Nothing contained herein shall be construed as a limitation of the right of partition of a Condominium Unit between the Owners thereof, but such partition shall not affect any other Condominium Unit.

11. Use of General and Limited Common Elements. Each Owner shall be entitled to exclusive ownership and possession of his Apartment. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

12. Use and Occupancy. The use and occupancy of the Property shall be restricted as follows:

a. All units shall be used for single-family residential purposes only.

b. No improvements of any kind or nature shall be constructed, altered, or allowed to remain on any Common Area, except as shall be approved by the Board of Directors of the Association.

c. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, and television. An easement is further granted to all law enforcement, fire protection, trash removal, ambulance and other similar and necessary utilities to enter Common Areas in performance of their duties.

d. No Unit shall be divided into two or more units, nor conveyed or encumbered in any less than the full original dimensions.

e. No rubbish or trash shall be stored on any Unit outside of the improvements situated thereon and shall be deposited in receptacles provided for the same by the Association at locations as shall from time to time be determined by the Association.

f. Owners shall be permitted a reasonable number of household pets provided the same are kept on leashes and attended by a person. The raising, breeding, or keeping of any animal, fowl or reptile for commercial purposes is prohibited. Any household pet which is a nuisance in the opinion of a majority of the Association Board of Directors shall be removed from the Project at the request of the Board of Directors or their designated agent.

g. All fences shall be deemed Common Area.

h. All exterior lights and light standards shall be approved by the Board of Directors of the Association for harmonious development and prevention of lighting nuisances.

i. The outside burning of any trash, rubbish or other materials shall be absolutely prohibited. Standard and approved exterior barbecues and portable cooking appliances shall be allowed for the preparation of foodstuffs only.

j. All parking spaces shall be used for automobile and pick-up trucks not exceeding 3/4 ton in weight parking only. All such vehicles shall be operative, shall currently be licensed, and shall bear a valid safety inspection sticker issued by the State of Colorado. Vehicles shall be moved at the request of the Association to facilitate snow removal and cleaning. The assignment of parking spaces shall be done in such a manner as determined by the Board of Directors of the Association.

k. Each Unit shall be maintained in a clean and orderly fashion and no use thereof shall be allowed nor permitted which may become a nuisance to other Unit owners.

l. The Board of Directors of the Association shall not be liable in damages to any Owner by reason of its exercise of control over the operation of the Properties. Each Owner, by recordation of the deed to a Unit, covenants and agrees that he will not bring an action or suit to recover damages against the Board of Directors.

Declarant and its employees, representatives, agents, and contractors may maintain a business and sales office, construction facilities and yards, model units and other facilities required during the construction and sales period.

The Association may make and Owners shall comply with additional rules and regulations governing the use of the Units, Common Elements and personal property for Common use, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

13. Easements for Encroachments. If any portion of the General Common Elements now or hereafter encroaches upon an Apartment Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of an Apartment Unit now or hereafter encroaches upon the General Common Elements or upon an adjoining Apartment Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the General Common Elements or the Apartment Units.

14. Termination of Mechanic's Lien Rights and Indemnification. Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in an Apartment Unit or Units with the consent or at the request of the Owner thereof or his agent, contractor or subcontractor shall be the basis for filing a lien against the Apartment Unit of any other Owner not expressly consenting to or requesting the same, or against the General Common Elements owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Apartment Unit of any other Owner or against the General Common Elements for construction performed or for labor, materials, services, or other products incorporated in or otherwise attributable to the Owner's Apartment Unit.

15. Administration and Management. The administration and management of this Condominium Property shall be governed by the Certificate of Incorporation and By-laws of Franklin Street Apartments Home Owners Association, Inc., a Colorado Non-Profit corporation, hereinafter referred to as the "Association." A certified copy of the Certificate of Incorporation of such corporation shall be recorded simultaneously with this Declaration. An Owner of a Condominium Unit, upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of his ownership. An exclusive Agent for the operation and management of this Condominium Complex may be appointed by the Association.

16. Reservation for Access-Maintenance, Repair and Emergencies. The Owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Directors of the Association, to have access to each Apartment Unit, from time to time, during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any General Common Elements therein or accessible therefrom, or for the making of emergency repairs therein necessary to prevent damage to the General or Limited Common Elements or to another Apartment Unit or Units.

Damage to the interior of any part of a 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; provided, however, that if such damage is the result of the negligence of a Unit Owner, then such Unit Owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

17. Owners' Maintenance Responsibility of Unit. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the windows, doors, interior non-supporting walls, the materials (such as but not limited to plaster, gypsum dry walls, paneling, wallpaper, brick, stone, paint, wall and floor tile, and floorings, but not including the subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit. The Owner shall not be deemed to own any utilities running through his Unit which serve more than one Unit, except as a tenant in common with the other Owners. Such right to repair, alter and remodel shall carry the obligation to replace any finishing materials removed with similar or other types of finishing materials of equal or better quality.

An Owner shall maintain and keep the interior of his own Unit in good taste and repair, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utility lines, pipes, wires, conduits or systems (hereafter referred to as "utilities") enter the Unit, shall be maintained and kept in repair by the Owner thereof.

An Owner shall not act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditaments.

18. Compliance With Provisions of Declaration and By-laws. Each Owner shall comply strictly with the provisions of this Declaration, the provisions of the Certificate of Incorporation and By-laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto or as the same may be lawfully amended from time to time. Failure so to comply shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner.

19. Revocation or Amendment to Declaration. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless seventy-five percent (75%) or more of the Owners representing an aggregate ownership interest in the General Common Elements and all of the holders of any recorded Mortgage or deed of trust covering or affecting any or all Condominium Units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded; however, the percentage of the undivided interest in the General Common Elements appurtenant to each Apartment Unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the Condominium Unit Owners as expressed in a duly recorded amendment to this Declaration.

20. Assessment for Common Expenses. The assessments made upon the Owners by the Association shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent or Board of Directors of the Association shall, from time to time, determine is to be paid by all of the Condominium Unit Owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements. Said sum may include, among other things, the following: Expenses of management, taxes, and special assessments, until separately assessed; fire insurance with extended coverage, vandalism and malicious mischief insurance with endorsements attached issued in the amount of the maximum replacement value of all of the Condominium Units; casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting and heating; repairs and renovations; garbage collecting; wages; water charges; legal and accounting fees; management fees; expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the General Common Elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

21. Insurance. The Managing Agent or Board of Directors shall obtain and maintain at all times insurance of the type and kind provided hereinafter, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other Apartment or Condominium Buildings, fixtures, equipment and personal property similar in construction, design, and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Association as the insured, as Trustee for the Owners, which policy or policies shall identify the interest of each Condominium Unit Owner and which shall provide for a standard, non-contributory Mortgage clause in favor of each first Mortgagee, and shall further provide that it cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice to each first Mortgagee. The handling Agent or Board of Directors shall, upon request of any first Mortgagee, furnish a certified copy of such blanket policy and the separate certificates identifying the interest of the Mortgagee.

The following insurance coverage shall be maintained:

(a) Property Insurance. The Association shall obtain insurance on the Project in such amounts as shall provide for full replacement thereof in the event of damage or destruction resulting from the perils against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism, and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Liability Insurance. The Association shall purchase broad form Comprehensive General Liability coverage in such amounts and in such forms as it deems advisable. Coverage shall be written on an occurrence basis and may include, without limitation, liability for personal injury, elevators, water damage, contractual obligations, operation of automobiles in behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the project.

(c) Workmen's Compensation and Employers' Liability Insurance. The Association may purchase Workmen's Compensation and Employer's Liability Insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law as it deems necessary.

(d) Other. 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 any personal property of the Association located thereon.

Each Owner shall be responsible for insurance coverage on his personal property within the Unit, together with public liability coverage within the Unit.

All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Determination of maximum replacement value of all Condominium Units for insurance purposes shall be made annually by one or more written appraisals, copies of which shall be furnished forthwith to each Mortgagee of a Condominium Unit. In addition, each Owner shall be notified of such appraisals.

22. Liability for Assessments. All Owners shall be obligated to pay the estimated assessments imposed by the Board of Directors or Managing Agent of the Association to meet the Common Expenses. Except for insurance premiums, the assessments shall be made pro rata according to each Owner's percentage interest in and to the General Common Elements. Assessments for insurance premiums shall be based upon that proportion of the total premiums that the insurance carried on a Condominium Unit bears to total coverage. Assessments for the estimated Common Expenses, including insurance, shall be due monthly in advance on the first day of each month. Any payment which is twenty (20) days delinquent, shall bear interest at the rate of 10% per annum from the date the payment was due. The Managing Agent or Board of Directors shall prepare and deliver or mail to each Owner an itemized quarterly statement showing the various estimated or actual expenses for which the assessments are made. Contribution 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.

No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the General Common Elements, or by abandonment of his Apartment.

23. Lien for Non-Payment of Common Expenses. All sums assessed but unpaid for the share of Common Expenses chargeable to any Condominium Unit, including interest thereon at ten percent per annum, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances except:

a. Tax and special assessment liens on the Unit in favor of any assessing entity; and

b. All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such a lien.

To evidence such lien the Board of Directors or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of the County of Mesa, State of Colorado. Such lien for the Common Expenses shall attach from the date of the filing of said Notice of Lien and may be enforced by foreclosure on the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage or deed of trust on real property upon the recording of a notice or claim thereof. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid in the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the Common Expenses assessed against each Condominium Unit shall also be a 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 same.

Any encumbrancer holding a lien on a Condominium Unit may pay any unpaid Common Expense payable with respect to such Unit, 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.

24. Liability for Common Expense Upon Transfer of Condominium Unit. Upon payment of a reasonable fee not to exceed ten dollars and upon the written request of any Owner or any Mortgagee or prospective Mortgagee of a Condominium Unit, the Association, by its Managing Agent or Board of Directors, shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date 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 in favor of all persons who rely thereon in good faith.

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate 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; provided however, that upon payment of a reasonable fee not to exceed ten dollars, and upon written request, any prospective grantee shall be entitled to a statement from the Managing Agent or Board of Directors, 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 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 Unit conveyed be subject to a lien for, any unpaid assessments against the subject Unit.

25. 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 mortgage on the following conditions: (1) Any such junior mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other obligations created by this Declaration, the Certificate of Incorporation and the By-laws. (2) 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 placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association.

26. Right of First Refusal by Owner. In the event any Owner of a Condominium Unit other than the Declarant shall wish to sell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, including an offer from another Owner, the selling or leasing Owner shall give written notice thereof to the remaining Owners together with a copy of such offer and the terms thereof. The remaining Owners, individually or collectively, shall have the right to purchase or lease the subject Unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, or his agent, together with a matching downpayment or deposit during the twenty-day period immediately following the receipt of the notice of the offer to purchase or lease. The right of first refusal herein provided shall not apply to leases or sub-leases having a term of less than seven months and one day.

In the event two or more remaining Owners shall have given their notice to the selling or leasing Owner as provided above, the determination of who among the competing Owners shall have the right to purchase or lease the Unit shall be made as follows: The selling Owner shall notify all Owners who submitted their notice of election to purchase or lease and provided the downpayment or deposit as required hereinabove, to submit sealed bids to the Board of Directors, to the attention of the President of the Association, within twenty days from the receipt of such notice. The President shall open all such bids upon the thirtieth day following the day the selling Owner mailed said notice to the competing Owners, and the Owner submitting the bid offering the highest purchase price or rental for the subject Unit shall have the right to purchase or lease the same.

In the event any Owner shall attempt to sell or lease his Condominium Unit without affording to the other Owners the right of first refusal herein provided, such sale or lease shall be voidable and may be voided by a certificate of non-compliance of the Managing Agent or Board of Directors duly recorded in the office of the Clerk and Recorder of Mesa County, Colorado.

However, in the event the Managing Agent or Board of Directors has not recorded such a certificate of non-compliance within one year from the date of recording of a deed which has been delivered in violation of this paragraph and within one year from the date of possession under a lease executed in violation of this paragraph, such a conveyance shall be conclusively deemed to have been made in compliance with this paragraph and no longer voidable.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the Owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his Condominium Unit to a trust deed, mortgage or other security instrument.

The failure of or refusal by the Owners to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an Owner received any subsequent bona fide offer from a prospective purchaser or tenant.

The right of first refusal as provided herein, shall extend and run for the lives of Thomas E. Folkestad, John E. Folkestad, and Steve P. Foster, and the survivor of them, plus twenty-one years.

Except as otherwise provided in Paragraph 27, and except upon a transfer of title to a public trustee or to a first mortgagee, each grantor of a Condominium Unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

27. Exemption From Right of First Refusal. In the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of paragraph 26, and the purchaser, or grantee under such deed in lieu of foreclosure, of such Condominium Unit shall be thereupon and thereafter subject to the provision of this Declaration and By-laws. If the purchaser following such foreclosure sale, or grantee under deed given in lieu of such foreclosure, shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the Condominium Unit free and clear of the provisions of Paragraph 26, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The following transfers are also exempt from the provisions of Paragraph 26:

- a. The transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s);
- b. The transfer of a deceased's interest to a devisee or devisees by will or to his heirs at law under intestacy laws;
- c. The transfer of an Owner's interest by treasurer's deed pursuant to a sale for delinquent taxes;
- d. The transfer of all or part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or to a person or person becoming partners; a transfer of all or part of a partner's or partners' interests between one or more partners and/or to persons becoming partners;
- e. The transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution. A transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least fifty percent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the Condominium Unit.

If the Owner of a Condominium Unit can establish to the satisfaction of the Managing Agent or Board of Directors that a proposed transfer is not a sale or lease, then such a transfer shall not be subject to the provisions of Paragraph 26.

Such persons acquiring an interest in any Unit as described above shall be subject to all the provisions of Paragraph 26.

28. Certificate of Compliance - Right of First Refusal. Upon written request of any prospective transferee, purchaser, tenant or an existing or prospective Mortgagee of any Condominium Unit, the Managing Agent or Board of Directors of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing:

a. With respect to a proposed lease or sale under Paragraph 26, that, proper notice was given by the selling or leasing Owner and that the remaining Owners did not elect to exercise their option to purchase or lease;

b. With respect to a deed to a first Mortgagee or its nominee in lieu of foreclosure, and a deed from such first Mortgagee or its nominee, pursuant to Paragraph 26, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 26.

c. With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer will not be subject to the provisions of Paragraph 26.

Such a certificate shall be conclusive evidence of the facts contained therein.

29. Association as Attorney-in-fact. This Declaration hereby makes mandatory the irrevocable appointment of an Attorney-in-fact to deal with the property upon its destruction, obsolescence, or condemnation.

Title to any Condominium Unit 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 Franklin Street Apartments Home Owners Association, Inc., a Colorado non-profit corporation, their true and lawful attorney in their name, place and stead, for the purpose of dealing with the property upon its destruction, obsolescence, or condemnation, as is hereafter provided. As Attorney-in-fact, the Association, by its president and secretary, 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 are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in succeeding subparagraphs 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 Common 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 replacements unless eighty percent of the Owners and all first Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter. In the event the damage or destruction applies to less than

the entire Project, the preceding percentage of Owners shall apply to the percentage of Owners in the buildings actually damaged or destroyed.

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 improvements, and if such damage is not more than fifty percent of all of the Condominium Units 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 an assessment to be made against all of the owners and their Condominium Units. Such deficiency assessment shall be a Common Expense and made pro rata according to each Owner's percentage interest in the General Common Elements, and shall be due and payable within thirty days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. 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 23. 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. 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 assessments liens in favor of any assessing entity;
- (3) For payment of unpaid Common Expenses;
- (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 more than fifty percent of all of the Condominium Units are destroyed or seriously damaged, and if the Owners representing an aggregate ownership interest of eighty percent (80%), or more, of the General Common Elements do not voluntarily, within one hundred days

thereafter, make provision for reconstruction, which plan must have the unanimous approval or consent of every first Mortgagee, 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, the entire remaining premises shall be sold by the Association, as Attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the By-laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such dividend proceeds shall be paid into a separate account representing each Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Apartment Unit and the name of the Owner. From each separate account, the Association, as Attorney-in-fact, shall use and disburse the total amount of each of such funds, without contribution from one account to another, toward the partial or full payment of the lien of any first Mortgage against the Condominium Unit represented by such separate account. There shall be added to each such account the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each Condominium Unit Owner's percentage interest in the General Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another by the Association, as Attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of this paragraph.

If the Owners representing an aggregate ownership interest of eighty (80%) percent or more, of the General Common Elements, adopt a plan for reconstruction, which plan has the unanimous approval of all first Mortgagees, then all of the Owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a Common Expense and made pro rata according to each Owner's percentage interest in the General Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. 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 23.

In addition thereto, the Association, as Attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided; and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from sale of such Condominium Unit shall be used and disbursed by the Association, as

Attorney-in-fact, for the same purpose and in the same order as provided in subparagraph (b)(1) through (5) of this paragraph.

d. Owners representing an aggregate ownership interest of eighty-five percent, or more, of the General Common Elements, may agree that the Condominium Units are obsolete and that the same should be renewed or reconstructed. Such agreement must have the unanimous approval of every first Mortgagee. In such instance, then the expense thereof shall be payable by all of the Owners as Common Expenses; provided however, that any Owner not agreeing to such renewal or construction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned shall be measured. Within ten days following the commencing date, each party shall nominate in writing, and give notice of such nomination to the other party, an appraiser who shall be a Licensed Colorado Real Estate Broker and be qualified to make appraisals of condominium and similar property in Mesa County, Colorado. If either party fails to make such nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another similarly qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another similarly qualified appraiser to be arbitrator between them, if they can agree on such person. If they are unable to agree upon such arbitrator, then he shall be selected from the panel of arbitrators of the American Arbitration Association. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the arbitrator, shall be final and binding. The expenses and fees of such appraisers or arbitrator or both shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen days thereafter, and the Association, as Attorney-in-fact, shall disburse such proceeds as is provided in subparagraph (b)(1) through (5) of this paragraph.

e. Owners representing an aggregate ownership interest of eighty-five percent or more, of the General Common Elements, may agree that Condominium Units are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every first Mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as Attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this declaration, the Map and the By-laws. The sales proceeds shall be apportioned among the Owners on the basis of each Owner's percentage interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts representing each Condominium Unit. Each such account shall be in the

name of the Association, and shall be further identified by the number of the Apartment and the name of the Owner. From each separate account, the association, as Attorney-in-fact, shall use and disburse the total amount 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)(1) through (5) of this paragraph.

f. Consequences of Condemnation. If at any time or time during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the property 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 shall apply:

(1) Proceeds. All compensation, damage, or other proceeds therefrom, the sum of which is hereinafter called the "Condominium Award," shall be payable to the Association.

(2) Complete Taking. 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 thereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the basis of each Owner's percentage interest in the General Common Elements, provided that if a standard different from the value of the property as a whole is employed to measure 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.

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 for in subparagraph (e) of this paragraph.

(3) Partial Taking. In the event that less than the entire Project is taken or condemned, or 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 General Common Elements shall be apportioned among the Owners on the basis of each Owner's percentage interest in the General 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/or 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 taking or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, 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 provided in subparagraph (b) of this paragraph.

(4) Reorganization. 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. Thereafter, the Association shall reallocate the ownership, voting rights, and assessments ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided in Paragraph 19.

(5) Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in this paragraph.

30. Personal Property for Common Use. Prior to the first conveyance of any Condominium Unit, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the entire premises and furnished by Declarant, which property is intended for the common use and enjoyment of the Condominium Unit Owners and occupants. The Association shall hold title to such property for the use and enjoyment of the Condominium Unit Owners and occupants. No Owner shall have any other interest and right thereto and all such right and interest shall absolutely terminate upon the Owner's termination of possession or ownership of his Condominium Unit.

31. Mailing of Notices. Each Owner shall register his mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addresses in the name of the Owner at such registered mailing address. All the notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the By-laws of the Association. All notices or demands to be served on Mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnished the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for in this section.

32. Arbitration Required for any Claim Hereunder. Except as otherwise herein provided, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court have jurisdiction thereof.

33. 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 is provided in Paragraph 19 of this Declaration or until terminated in the manner and as is provided in subparagraphs (c), (e) and (f) of Paragraph 29 of this Declaration.

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 circumstances by invalidated, such invalidity shall be affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

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 singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

d. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and By-laws of the 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, damages or injunctive relief or both, costs and expenses of such proceeding and all reasonable attorney's fees. Such action shall be maintainable by the Association in behalf of the Owners.

e. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have conveyed said interest as provided herein, but the Owner of a Condominium Unit shall have no obligation for expenses or other obligations accruing after he conveys such Condominium Unit.

f. Any rights or interests reserved hereby to the Declarant may be transferred or assigned by the Declarant.

g. The real property may be subject to a construction loan, which loan will be discharged as specific Condominium Units when sold.

h. Declarant reserves the right to make modifications, additions or deletions in or to this Declaration as may be required by a mortgage lender or insurer. Such modification, addition or deletions will not increase the cost of Condominium Units. There will be no material physical modifications of the Project and any such changes will

not decrease the financial obligations of Declarant as a Unit Owner.

i. Declarant contemplates sale of 100 percent of the Condominium Units; however, Declarant reserves the right to retain unsold Units and sell, lease or rent them without the approval of the Association so long as Declarant uses due care and diligence regarding the good character habits and general desirability of the tenants.

j. Declarant disclaims any intent to warranty or make representations except as is set forth in this Declaration.

k. 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 invalidity shall not affect the validity of the remainder of the Declaration, and the application of such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall be not affected thereby.

l. 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.

m. This Declaration shall be binding upon the undersigned, their successors and assigns.

IN WITNESS WHEREOF, Declarant, by its corporate officers, has fully executed this Declaration this 23rd day of November, 1978.

  
Jeffrey T. Wandland  
Assistant Secretary

SYSTEMATICS CORPORATION  
a Colorado corporation  
By Thomas E. Folkestad  
President

Steve P. Foster  
Steve P. Foster

STATE OF COLORADO }  
COUNTY OF MESA } ss.

The foregoing instrument was acknowledged before me this 23rd day of November, 1978 by Thomas E. Folkestad as President and Jeffrey T. Wandland as Assistant Secretary of SYSTEMATICS CORPORATION, a Colorado corporation and Steve P. Foster.

My Commission expires: October 10, 1979.  
James Bradford  
Notary Public

EXHIBIT "A"

Commencing at the NE Corner of the North 1/2 South 1/2 SE 1/4 SE 1/4 of Section 10, Township One South, Range One West of the Ute Meridian; thence S 00°05'00" E 36.00 feet; thence N 89°36'00" W 50.00 feet to the True Point of Beginning; thence S 00°05'00" E 206.23 feet; thence N 89°36'00" W 150.00 feet; thence S 00°05'00" East 97.00 feet; thence N 89°36'00" W 200.00 feet; thence N 00°05'00" W 303.23 feet; thence S 89°36'00" E 350.00 feet to the True Point of Beginning, in the City of Grand Junction, in Mesa County, Colorado, containing 2.102 acres.

EXHIBIT "B"

CONDOMINIUM DECLARATION  
FOR  
FRANKLIN STREET APARTMENTS

---

<u>Type of Unit</u>	<u>Building</u>	<u>Appurtenant Undivided Interest (Percentage)</u>
"a"	"A"	.0104
"b"	"A"	.0134
"c"	"B"	.0100
"d"	"B"	.0128
Each Unit	"C"	.0190
Each Unit	"D"	.0242

Book 11  
Page 123

# THE UNITED STATES OF AMERICA,

Certificate No. 12.

To all to whom these Presents shall come, GREETING:

Whereas, John Mayhew of Mesa County Colorado, .....

has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at  
Guanacama Colorado

John Mayhew

whereby it appears that full payment has been made by the said  
according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further pro-  
vision for the sale of the Public Lands," for the land he has so deposited, .....

in witness whereunto, George Augustus Wright of the Mexican in  
Colorado concerning one thousand and thirty acres  
according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the  
Surveyor General, which said Tract has been purchased by the said John Mayhew

Now Know Ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said heirs, the said Tract above described: To Have and to Hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging, unto the said heirs and assigns forever: subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of Courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In Testimony Whereof, I, *Ulysses S. Grant*, President of the United States of America, have caused these letters to be made patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the *10th* day of *April*, in the year of our Lord one thousand eight hundred and *1871*, and of the Independence of the United States the one hundred and *1st*.



BY THE PRESIDENT: *Ulysses S. Grant*  
 By *Wm. D. Felt* Secretary,  
 Recorder of the General Land Office.

Recorded, Vol. / Page 176  
 Filed for Record the *10th* day of *April*, A. D. 1871, at *10:40* o'clock *A. M.*  
*Wm. D. Felt*  
 Recorder

By Deputy.



State of Colorado  
County of Mesa

Recorded at 1:01 o'clock P.M. Feb 10, 1955  
Application No. 660480 Annie M. Dunston, Recorder

676 107

Grantee: P. H. Young  
Approved: *[Signature]*

Document No. 42058

The Grantor hereby acknowledges receipt of ONE and no/100 DOLLARS (\$100.00) from PUBLIC SERVICE COMPANY OF COLORADO in consideration of which said Company has conveyed and assigns, the right, privilege and authority to survey, construct, operate, maintain, control, repair and replace its gas pipe lines, whether said lines now or may hereafter serve the property herein described or other property, with all fixtures and devices, used or useful in the operation of said lines, through and along a course as said lines may hereafter be constructed in, through, over or across North 1/2 South 1/2 Southeast 1/2 Southeast 1/2

of Section 10, Township 1 South, Range 1 North of the Ute Principal Meridian in the County of Mesa, State of Colorado, the approximate corner line of which right of way is more particularly described as follows:

beginning at a point on the east line of and one hundred and nine feet (109') north of the southeast corner of the North 1/2 South 1/2 Southeast 1/2 Southeast 1/2 of Section 10 (10), Township 1 South, Range 1 West of the Ute Principal Meridian extending thence west and parallel with the south line of said North 1/2 South 1/2 Southeast 1/2 Southeast 1/2 of Section 10 (10) a distance of four hundred feet (400') to point of terminus.

The right of way herein granted to be 100 (100) feet in width, five (5) feet on each side of above described center line.

Together with the right to enter upon said premises, survey, construct, maintain, operate, repair, replace, control and use said pipe lines and related fixtures and devices, and to remove objects interfering therewith, and together with the right to use so much of the adjoining premises of Grantor during surveying, construction, maintenance, repair, removal, or replacement of said gas pipe lines and related fixtures and devices as may be required to permit the operation of standard gas construction or repair machinery. The Grantor reserves the right to cultivate, use and occupy said premises for any purpose consistent with the right and privileges above granted and which will not interfere with or obstruct any of the said Company's facilities thereon or use thereof. Such reservation by the Grantor shall in no event include the right to erect or cause to be erected any buildings or structures upon the right of way herein granted. In case of the permanent abandonment of said right of way, all rights, privileges and interests herein granted shall end, cease and determine.

The work of installing said lines and related fixtures and devices shall be done with care; the surface along said right of way shall be restored substantially to its original level and condition; and all damage to the premises, except obstructions not specifically located by Grantor, caused thereby shall be repaired at the expense of the Company.

This grant is subject to existing mineral leases covering any part of the above described land.

Witness my hand and seal this 17th day of October, A. D. 1955  
*[Signature]*  
Grant Junction

WITNESSES: *Karl J. Patrick* - *Alfred Spence* (SEAL)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(SEAL)  
(SEAL)  
(SEAL)

DIVISION - Grant Junction  
NAME OF LINE OR EXTENSION - Grant Junction

100-11-1650-1  
W.O.W. - 277

FEB 19 1978

Vol. 1059, Page 596

R/W 38455

STATE OF COLORADO, COUNTY OF MESA

RECORDED BY 1102302

RIGHT-OF-WAY EASEMENT

The Undersigned Grantor (and each and all of them if more than one) for and in consideration of Ten dollars (\$10.00) hereby grants, bargains and conveys unto The Mountain States Telephone and Telegraph Company, a Colorado corporation, 931 14th Street, Denver, Colorado, 80202, Grantee, its successors, assigns, licensees, licensees maintain and remove such communication and other facilities, from time to time, as said Grantee may require upon, over, under and across the following described land which the Grantor owns or in which the Grantor has any interest, to wit:

The East Ten (10) feet of a tract of land described as follows: The East 200.00 feet of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 10, Township 1 South, Range 1 West, of the Ute Principal Meridian, Grand Junction, Colorado, EXCEPT the North 25.00 feet and the South 27.00 feet thereof. Containing 0.710 Acre more or less.

The North Ten (10) feet of a tract of land described as follows: The East 200.00 feet of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 10 Township 1 South, Range 1 West of the Ute Principal Meridian, Grand Junction, Colorado, EXCEPT the North 25.00 feet and the South 27.00 feet thereof. Containing 0.710 Acre more or less. Also, the North Ten (10) feet of a tract of land described as follows: The West 200.00 feet of the East 400.00 feet of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 10 Township 1 South, Range 1 West of the Ute Principal Meridian, Grand Junction, Colorado, EXCEPT the North 25.00 feet of the West 200.00 feet thereof. Containing 1.392 Acres more or less.

The West Ten (10) feet of the North 206.23 feet of a tract of land described as follows: The West 200.00 feet of the East 400.00 feet of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 10 Township 1 South, Range 1 West of the Ute Principal Meridian, Grand Junction, Colorado, EXCEPT the North 25.00 feet of the West 200.00 feet thereof. Containing 1.392 Acres more or less.

situates in County of Mesa, State of Colorado TOGETHER with the right of ingress and egress over and across the lands of the Grantor to and from the above-described property, the right to clear and keep cleared all trees and other obstructions as may be necessary and the right to permit other utility companies to use the right of way jointly with Grantee for their utility purposes.

The Grantor reserved the right to occupy, use, and cultivate said property for all purposes not inconsistent with the rights herein granted.

Signed and delivered this 12th day of February, A.D. 1978 at 662 Bond Avenue Grand Junction, Colorado John Folkestad

STATE OF COLORADO County of Mesa ss.

I, the undersigned instrument was acknowledged before me this 12th day of February, 1978, by John Folkestad

WITNESS my hand and official seal. My commission expires May 20, 1978

Handwritten signature

FORM 410-10-2325

RETAIN PERMANENTLY

OFFICE: Larry Matarrese  
R.O.W. Agent

Approved: *[Signature]*  
FOR & BY: *[Signature]*

Ref No. 840-845  
Document No. 87767

**GAS SYSTEM UTILITY EASEMENT**

BOOK 1133 PAGE 695

The undersigned Grantor hereby acknowledges receipt of \$ 1.00 from PUBLIC SERVICE COMPANY OF COLORADO in consideration of which he hereby grants unto said Company, its successors and assigns, an easement for a gas distribution main system and all pipelines, fixtures and devices, used or useful in the operation of said system, through, over, under, across and along the courses shown on the attached plat and located on premises in the City of Grand Junction County of Mesa State of Colorado described as follows:

STATE OF COLORADO, COUNTY OF MESA  
RECORDED BY 468 INDEXED BY P JAN 12 1978  
REGISTERED BY 1133658 SEE OFFICIAL RECORDS

**PARCEL "A"**

The West 200.00 feet of the East 400.00 feet of the North 1/4, South 1/4, SE 1/4, SE 1/4, of Section 10, Township 1 South, Range 1 West, of the Ute Meridian, Grand Junction, Colorado. Except the North 25.00 feet of the West 100.00 feet thereof. Containing 1.192 acres more or less.

Franklin Park West Apartments at  
Known as 125 West Franklin Avenue Street, Grand Junction, Colorado.

The easements herein granted are 4 feet in width on each side of the pipelines as installed along the courses shown on the attached plat.

Together with the right to enter upon said premises, survey, construct, maintain, operate, repair, replace, control and use said system and related fixtures and devices, and to remove objects interfering therewith, including the trimming of trees and bushes, and together with the right to use so much of the adjoining premises of Grantor during surveying, construction, maintenance, repair, removal or replacement of said system and related fixtures and devices as may be required to permit the operation of standard utility construction or repair machinery, and the right to permit the installation of the facilities of any other company. The Grantor reserves the right to use and occupy said premises for any purpose consistent with the right and privileges above granted and which will not interfere with or endanger any of the said Company's facilities, buildings or structures upon the easements herein granted or to place or locate any mobile home trailer units thereon. In case of the permanent abandonment of said right of way, all right, privilege and interest herein granted shall terminate.

The work of installing said lines and related fixtures and devices shall be done with care; the surface along said easements shall be restored substantially to its original level and condition.

"Grantor" shall include the plural and the feminine.

Signed this 14<sup>th</sup> day of December 1977

WITNESSES:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

GRANTOR:  
Systematic Corporation  
President *[Signature]*  
Ass't. Secretary *[Signature]*  
x Steve P. Foster  
Steve P. Foster



STATE OF COLORADO, )  
County of Mesa ) ss.



The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 1977

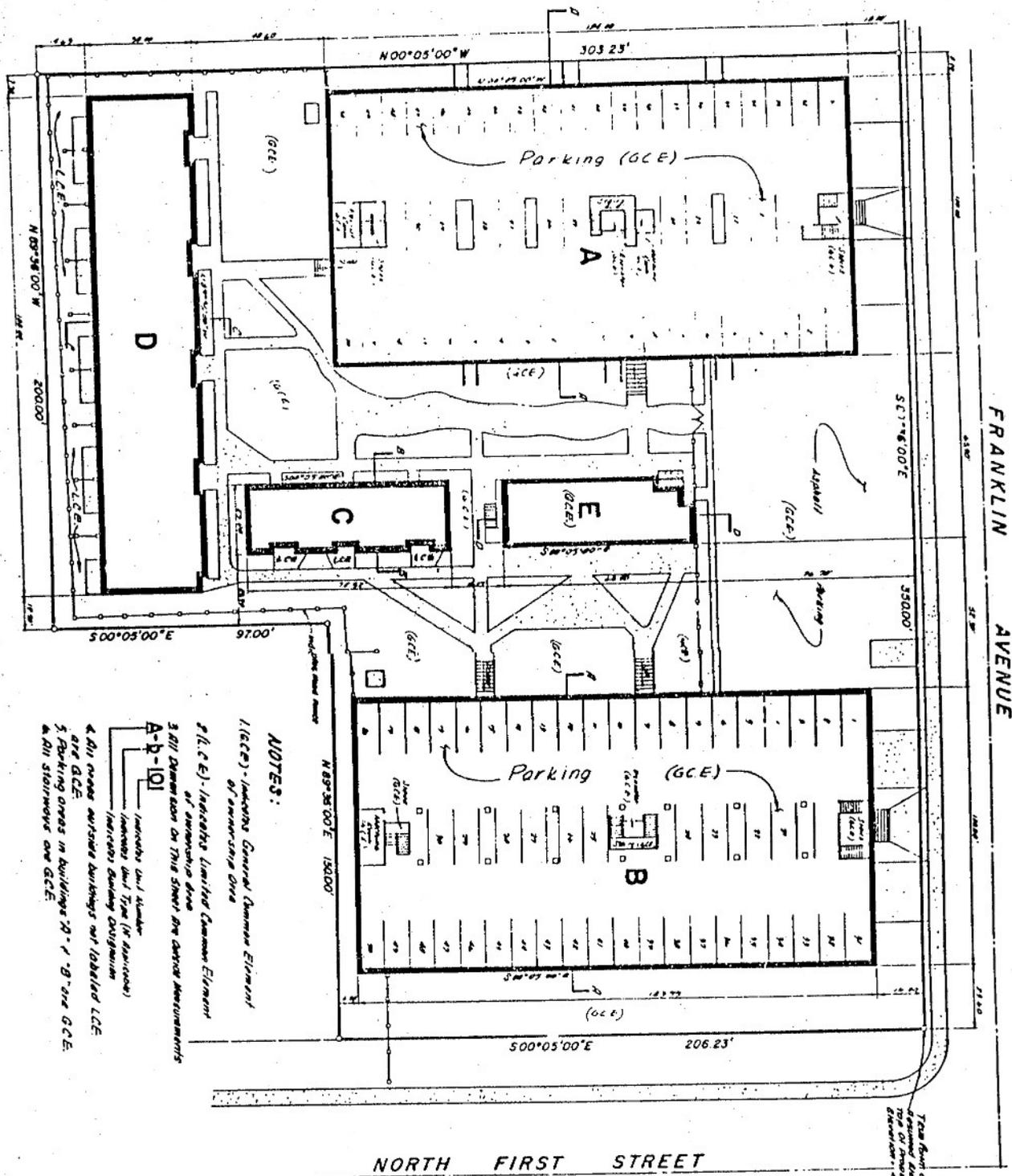
My commission expires 1980  
Witness my hand and official seal. H. Larry Schuber Notary Public

\* If acting in official or representative capacity, insert name and title office or capacity and for whom acting.

DIVISION NAME OF LINE OR EXTENSION 1310-7  
TOWN Grand Junction  
SECTION OF PAYMENT 3130  
CASH







FRANKLIN AVENUE

NORTH FIRST STREET

**NOTES:**

- 1. (GCE) - Indicates General Common Element of ownership over
- 2. (LCE) - Indicates Limited Common Element of ownership over
- 3. All dimensions on this sheet are based on measurements of surveying data
- 4. All areas outside buildings not labeled LCE are GCE
- 5. Parking areas in buildings "A" - "B" are GCE
- 6. All stairways are GCE

A-b-101

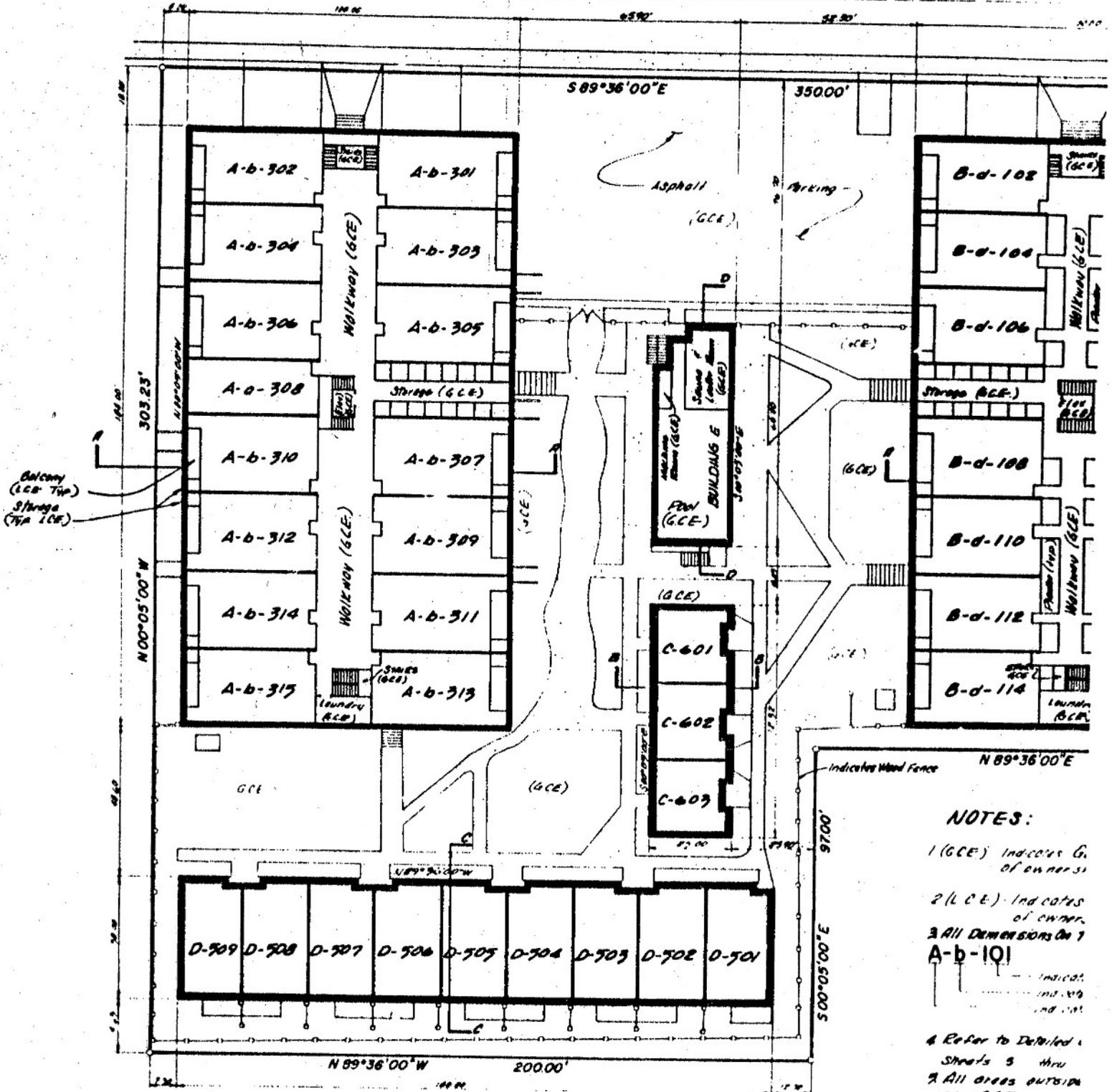
Indicates that Stairway  
(Indicates that Trap (R) Stairway)  
(Indicates) Building Designation

From front of Enclosure  
Assumed Elevating  
Top of Enclosure  
Elevation - 1000.00



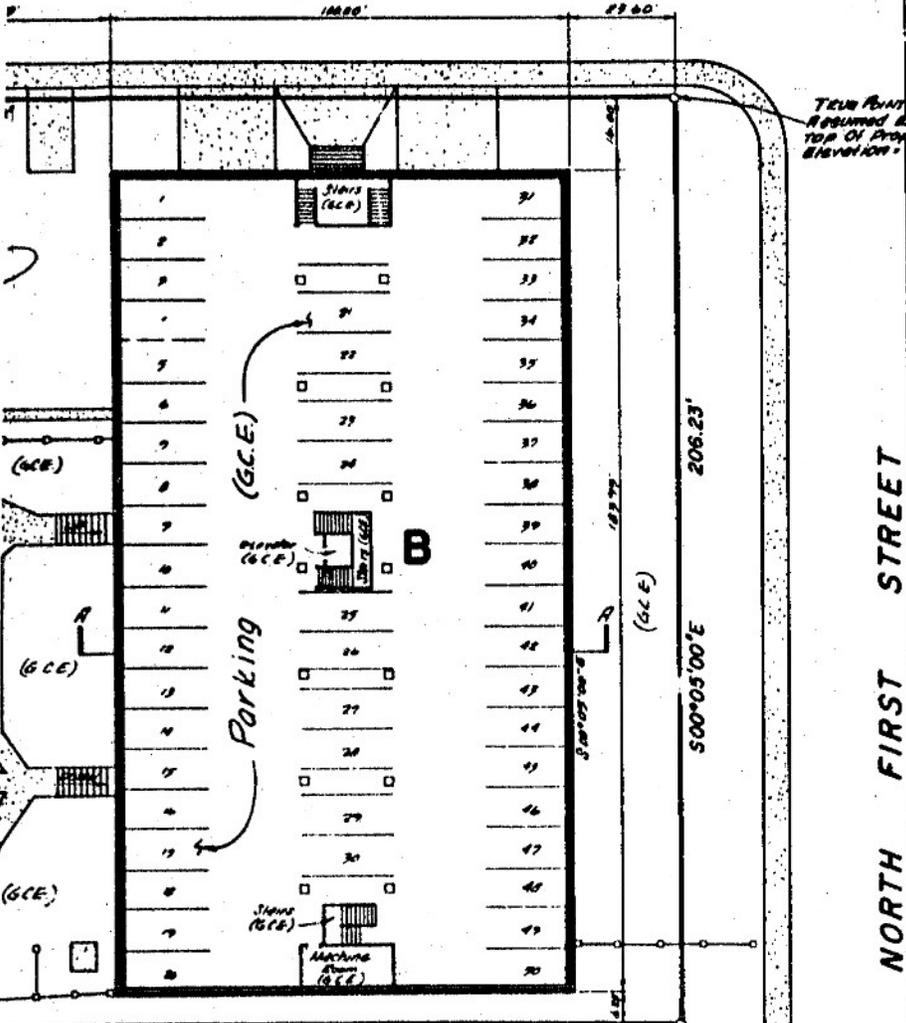

 Franklin Street Apartments  
 Building Level Plan  
 SHEET 1 OF 1

# FRANKLIN AVENUE



- NOTES:**
- 1 (G.C.E.) Indicates G.C.E. of owners.
  - 2 (L.C.E.) Indicates L.C.E. of owners.
  - 3 All dimensions on 1 A-b-101.
  - 4 Refer to Detailed Sheets 5 thru 7.
  - 5 All areas outside are G.C.E.
  - 6 PARKING AREAS IN 1.
  7. All STAIRWAYS ARE

AVENUE



TRUE POINT OF BEGINNING  
Assumed Elevation  
TOP OF PROPERTY CORNER  
ELEVATION = 4600.00

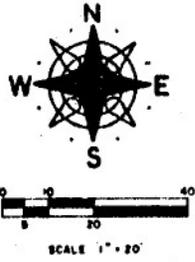
NORTH FIRST STREET

- Indicates Flood Fence

9700'  
500'05'00\"/>

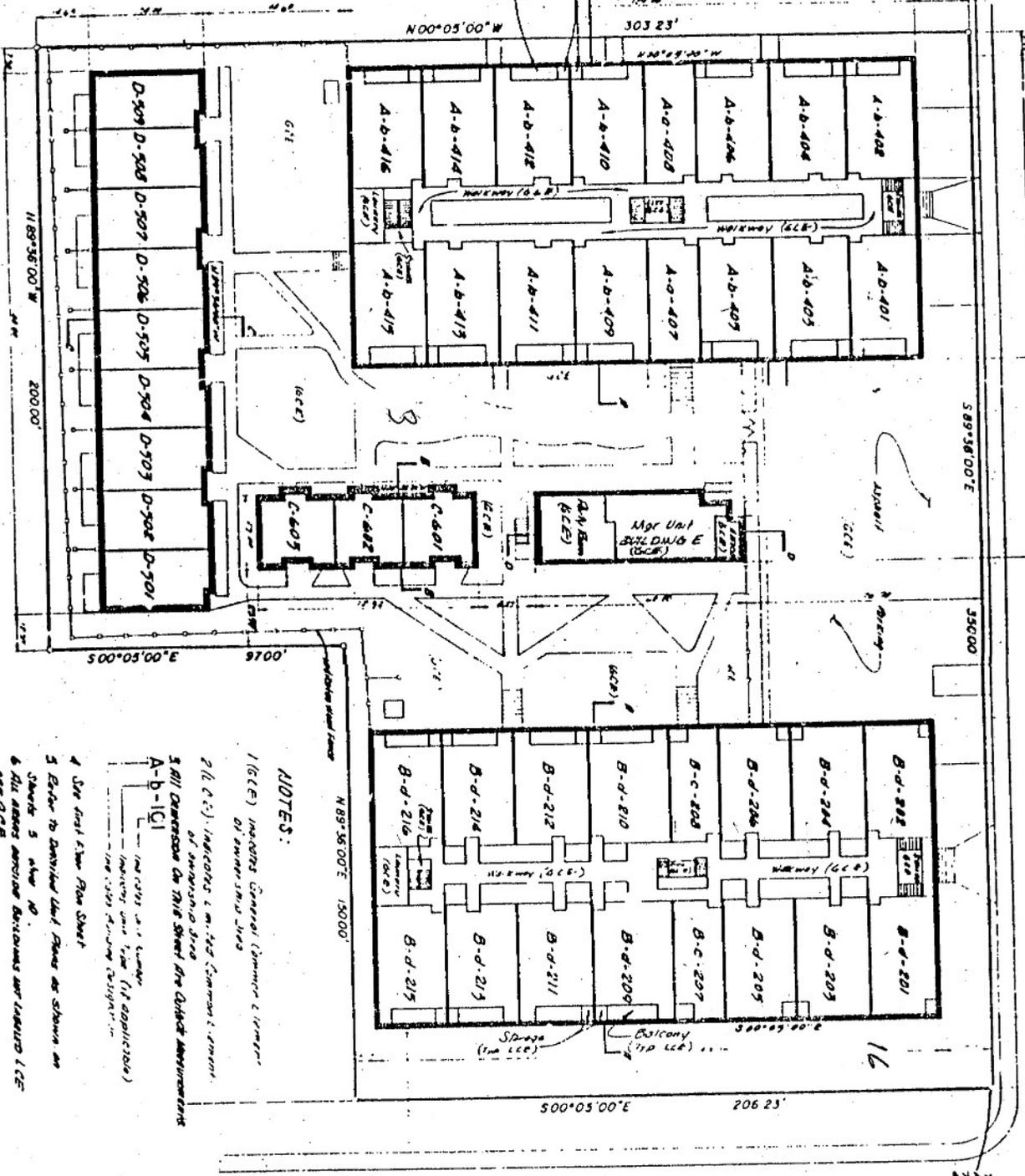
**NOTES:**

1. (G.C.E.) - Indicates General Common Element of ownership Area
  2. (L.C.E.) - Indicates Limited Common Element of ownership Area
  3. All Dimension On This Sheet Are Outside Measurements.
- A-b-101**
- Indicates Unit Number
  - Indicates Unit Type (If Applicable)
  - Indicates Building Designation
4. All areas outside buildings not labeled L.C.E. are G.C.E.
  5. Parking areas in buildings "A" & "B" are G.C.E.
  6. All stairways are G.C.E.



Parking Level Plan	SHEET 2 OF 10
Condominium Map For <b>FRANKLIN STREET APARTMENTS</b>	

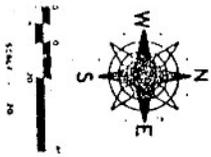




FRANKLIN AVENUE

NORTH FIRST STREET

- NOTES:**
- 1 (C.C.E.) INDICATES GENERAL DIMENSIONS & LOCATIONS OF EXISTING WALLS
  - 2 (C.C.E.) INDICATES S.W. THE COMMON STREET OF ADJOINING BLDG
  - 3 ALL DIMENSIONS ON THIS SHEET ARE DIRECT MEASUREMENTS A-B-1(C)
  - 4 SEE FIRST FLOOR PLAN SHEET
  - 5 REFER TO DIMENSIONAL PLAN SHEET AS SHOWN ON SHEETS 5 AND 10
  - 6 ALL AREAS INDICATED BY DIMENSIONS ARE INDICATED (C.C.E.) SEE C.C.E.
  - 7 FURTHER EXPLANATION OF DIMENSIONS "D-1" "B" ARE C.C.E.
  - 8 ALL DIMENSIONS ARE AS SHOWN



Second Floor Plan  
 Franklin Street Apartments

44