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CONDOMINIUM DECLARATION
FOR
RIVERSIDE PLAZA LOT H CONDOMINIUMS

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CONDOMINIUM DECLARATION
FOR
RIVERSIDE PLAZA LOT H CONDOMINIUMS
(A Condominium)

THIS DECLARATION is made and entered into by RIVERSIDE PLAZA LOT H, LLC, hereinafter referred to as "Declarant", creating a Condominium pursuant to the COLORADO COMMON INTEREST OWNERSHIP ACT.

W I T N E S S E T H:

WHEREAS, the Declarant is the Owner of certain real property ("Real Estate") situated in the Town of Basalt, County of Eagle, State of Colorado, described as follows:

> **Lot H, Amended Plat of Ute Center Subdivision, as shown on the Amended Plat of Lots A, B, C, and H Ute Center Subdivision, recorded October 29, 1998 under Reception No. 674361 in the office of the Clerk and Recorder of Eagle County, Colorado**

WHEREAS, the Declarant has improved the above-described Real Estate with a condominium project, which Real Estate, building and other improvements on the Real Estate are collectively ("Riverside Plaza Lot H Condominiums"), consisting of one (1) building containing fifteen (15) Condominium Units, with garage space plus storage area in the garage level of the building, more particularly described immediately above, all of which units will be treated as integral parts of a single condominium ownership project; and

WHEREAS, the Declarant desires to establish certain rights and easements in, over, and upon said Real Estate for the benefit of itself and all future Owners of any part of said Real Estate, and any air space Unit and Units thereon or therein contained, and to provide for the harmonious, beneficial, and proper use and conduct of the Riverside Plaza Condominiums; and

WHEREAS, the Declarant desires and intends that the several Unit Owners, mortgagees, and trust deed holders, in the property shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights, easements, privileges, restrictions, and obligations hereinafter set forth, all of which are declared to be in furtherance of and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Riverside Plaza Condominiums.

NOW, THEREFORE, Declarant hereby submits the Real Estate to the provisions of the Colorado Common Interest Ownership Act as it may be amended from time to time creating a condominium common interest community, and does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations shall be deemed to run with the land above described, and shall be a burden and a benefit to Declarant, its successors and assigns, and all persons acquiring or owning an interest in the subject property and improvements, their grantees, mortgagees, successors, heirs, executors, administrators, devisees or assigns.

1. Definitions. Unless the context clearly indicates a different meaning therefor:

(a) "Articles" means the Articles of Incorporation of the Association.

(b) "Association" means the Unit Owner's association, called Riverside Plaza Lot H Condominiums Association, its successors and assigns, organized under Section 38-33.3-301 of the Colorado Common Interest Ownership Act, as a non-profit Colorado corporation, its successors and assigns, the Certificate of Incorporation and Bylaws of which shall govern the administration of the Riverside Plaza Condominiums.

(c) "Board" means the Board of Directors of the Association.

(d) "Building" means a four level building, including the basement/garage level, and any other building improvements comprising a part of the Riverside Plaza Condominiums and containing the Units.

(e) "Bylaws" means the Bylaws of the Association.

(f) "Common Expenses" means and includes:

(i) All sums lawfully assessed against the Owners by the Board;

(ii) Expenses of administration, maintenance, reserves for and repair or replacement of the General Common Elements, as hereinafter defined;

(iii) Expenses declared common expenses by provisions of this Declaration and the Bylaws; and

(iv) Expenses agreed on as common expenses by a vote of the Owners.

(v) Those expenses assessed pursuant to Covenants, Conditions, and Restrictions of Ute Center Subdivision to which the Town of Basalt is a third party beneficiary and recorded in Book 538 at Pages 35, et. seq., in the office of the Clerk and Recorder of Eagle County, Colorado, the contents of which are incorporated herein by reference for all purposes, as if fully set forth herein, as such are amended from time to time.

(vi) All obligations of Association as owner of Real Estate in Ute Center Subdivision whenever or however occurring.

Such Common Expenses shall be paid by the respective Unit Owners in the same proportion as their ownership interests.

(g) "Common Interest Community" means all the Real Estate described in this Declaration including all Condominium Units, building, fixtures, personal property, and improvements submitted to this Declaration with respect to which a Person, by virtue of such Person's ownership of a Unit is obligated personally as an Owner to pay for real estate taxes, insurance premiums, maintenance, and improvement of Real Estate described in this Declaration, including maintenance of the Fisherman's Easement, Gabions, and all other waterfront maintenance and improvements located on or adjacent to the Real Estate, all Condominium Units, building(s), fixtures, personal property and improvements submitted to this Declaration.

(h) "Condominium Unit" means the fee simple interest title, in and to a Unit, together with the undivided interest in the General Common Elements, and the appurtenant Limited Common Elements.

(i) "Declarant" means the Declarant named herein, and such successor or successors as may be designated hereafter by Declarant by duly recorded written notice.

(j) "Declaration" means this instrument by which the Riverside Plaza Condominiums project is established and all other recorded instruments however denominated, that create this Common Interest Community, including any amendments to this Declaration and also including any plats and maps.

(k) "Entire Premises" or "Property" or "Condominium Project" means the herein above described Real Estate, all improvements and structures constructed thereon or contained therein, including the Fisherman's Easement, Gabions, and all other waterfront improvements located on or adjacent to the Real Estate, and all easements, rights, and appurtenances belonging thereto, and all fixtures and property intended for the mutual use, benefit, and enjoyment of the Unit Owners, each of which is subject to reservations and exceptions as contained in the Articles of Incorporation, Bylaws of the Association, this Declaration, and each other document of record in the office of the Clerk and Recorder of Eagle County affecting the Condominium Project.

(l) "General Common Elements", means all portions of the Riverside Plaza Condominiums other than the Units (except those portions allocated by this Declaration, or by operation of law designated as Limited Common Elements hereinafter defined), including, but not limited to, the following:

(i) The foundations, columns, girders, beams, supports, main perimeter and supporting walls, roofs, and those entrances, stairs, elevators, stairways, balconies, landings, access corridors, fire escapes and halls necessary to the safety, maintenance, or common use or access;

(ii) The exterior loading, storage, walkway, and yard garden areas;

(iii) Any installations consisting of equipment and materials making up any power, light, gas, electrical, air handling or conditioning, heating tanks, motors, ducts, vents, chases, compressors and similar apparatus composing the central utility systems;

(iv) In general, all other apparatus and installations existing for common use;

(v) All pipes, wires, ducts, flues, chutes, conduits, public utility lines (to the outlets) and structural components including beams and sheer walls running through a Unit or serving, or extending into, the General Common Elements, or any part thereof; and spaces designated on the Map between ceiling surfaces of each floor or level and floor surfaces on the next higher floor or level, and similarly designated vertical spaces within the main walls of the building and wall interspaces within walls or proposed walls shown on the Map as dividing Units expressly so designated or other spaces within the building are General Common Elements for the exclusive purpose of installation, use, repair, maintenance of, and connection to mechanical, electrical, plumbing, sprinkling, telephone, telegraph, wiring, and similar apparatus as may be reasonably required either for the convenient use and occupation of the General Common Elements, insofar as the same may be accomplished without damage to or unauthorized encroachment upon the air space within the Unit;

(vi) That portion of the roof space above the Units shown on the top floor of the building on the Map.

(vii) All other parts of the Riverside Plaza Condominiums and improvements necessary or convenient to its existence, maintenance, and safety, and normally in common use, plus, but not limited to the Fisherman's Easement, Gabions, and all other waterfront improvements.

(m) "Guest" means any agent, employee, tenant, guest, licensee or invitee of an Owner.

(n) "Limited Common Element" means a portion of the Common Elements allocated by this Declaration or by the operation of Section 38-33.3-202(1)(b) or (1)(d) of the Colorado Common Interest Ownership Act for the exclusive use of one or more Units but fewer than all of the Units and which are or may hereafter be designated on the Map, and that portion of the roof space above the Units shown on the top floor of the building as shown on the Map.

(o) "Managing Agent" means the person or entity employed by the Board to perform the management and operational functions of the Common Interest Community.

(p) "Map" or "Plat" means a plat or survey of the surface of the ground of the Property, showing a survey and legal description thereof, the location of building with respect to the boundaries of the Property, together with a diagrammatic floor plan of the building showing the vertical locations and dimensions of all boundaries of each Unit, Unit numbers identifying the Units, together with such other information as may be included thereon in the discretion of the Declarant. Such Map, shall be filed for record in the office of the Clerk and Recorder of Eagle County, Colorado, hereinafter referred to as the "Map," which Map is hereby incorporated herein by reference, and which Map shall be filed in whole or in part, depicting thereon:

(i) the legal description of the property and a survey thereof;

(ii) the name and general location of the Common Interest Community;

(iii) the linear measurements and location, with reference to the exterior boundaries of the land, of the building and all improvements built on the land;

(iv) floor plans and elevation plans of the building showing the location, the designation and the linear dimensions of each Unit, and the designation of the Limited Common Elements;

(v) the elevations of the unfinished interior surfaces of the floor and ceilings as established from a datum plan, and the linear measurements showing the thickness of the perimeter and common walls of the building.

The Map and any supplement(s) thereto shall contain the statements of: (1) the Declarant, submitting the Condominium Project to the provisions of this Declaration; and (2) the registered land surveyor certifying that the Map fully and accurately depicts the layout, measurements and location of all of the building(s) and improvements, the Unit designations, the dimensions of such Units, and the elevations of the floors and ceilings. Declarant hereby reserves unto Declarant and the Board the right, from time to time, until the sale and conveyance of a unit, to amend the Map and supplement(s) thereto, to conform the Map to the actual location of any of the constructed improvements, to establish, vacate and/or relocate utility easements, access road easements and parking spaces, and to establish certain General Common Elements as Limited Common Elements.

In interpreting any and all provisions of this Declaration and the Bylaws, subsequent deeds to and/or mortgages of Condominium Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations from the location of such Unit as indicated on the Map.

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

(r) "Mortgagee" means any person or entity named as the mortgagee or beneficiary under any Mortgage or Deed of Trust under which the interest of any Owner in or to a Unit is encumbered.

(s) "Occupant" means any person or persons, including the Owner, in possession of a Unit.

(t) "Owner" means any person, firm, corporation, partnership, association, or other legal entity, or any combination thereof, at any time owning a fee interest in a Unit. The term "Owner" shall not refer to any Mortgagee or Trust Deed beneficiary as herein defined, unless such Mortgagee or Trust Deed beneficiary has acquired legal and beneficial title pursuant to foreclosure or any proceeding in lieu of foreclosure or otherwise.

(u) "Person" means an individual, corporation, limited liability company, partnership, association, trustee, or any other legal entity.

(v) "Unit" means a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described or determined from the Declaration, being one of the individual air space units, consisting of an enclosed room (or rooms to be enclosed by "proposed walls" or accessed by "proposed doors") occupying part of or all of the units and levels which are bounded by the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, as shown on the Map, together with all fixtures and improvements therein contained, but not including the structural components of each building, if any, within such

Unit. Each Unit includes its respective undivided interest in the General Common Elements allocated as set forth herein and any Limited Common Elements made appurtenant to such Unit for the purpose of allocating assessments. However, for the sole purpose of voting regarding all condominium matters, each Unit by and through its Owner or Owners, shall have one vote without regard to the square footage of each Unit. Said Units may be used and occupied for any lawful purpose, subject to use and occupancy restrictions contained in this Declaration and Rules and Regulations of the Association, and also subject to the additional provisions that the usage within each Unit must conform to the parking code of the Town of Basalt.

(w) Each capitalized term not otherwise defined in this document is hereby defined as set forth in the Colorado Common Interest Ownership Act.

2. Combination of Units. Declarant hereby reserves special Declarant rights for itself, its successors and assigns, to physically combine the area or space of a Unit with the area or space of all or a portion of one or more adjoining Units, and the aggregate of the undivided interests in and to the General Common Elements appurtenant to such combined Units shall be appurtenant to the resulting enlarged Unit which shall result from such combination, including the right to construct any Limited Common Elements shown on the Map as approved but not yet constructed, which Limited Common Elements shall continue to be appurtenant to the combined Units. Any such combined Units may subsequently be redivided into the same Units as previously shown on the Map, provided that all expenses of combining or separating any adjoining Units shall be borne only by the respective Owners of said Units and such construction work shall be accomplished in compliance with the provisions of Subparagraphs (i) and (j) of Paragraph 10 hereof. No Units may be divided or created other than shown on the Map, except as allowed in this Paragraph 2.

3. Inseparability of a Condominium Unit. Except as provided in this Declaration, respecting the modification of percentage interests by virtue of combination or subdivision, each Unit Owner shall at all times be entitled to one fifteenth (1/15) of the ownership and obligations in the General Common Elements appurtenant to such Unit. Each Owner shall own such undivided interest in the General Common Elements as a tenant-in-common with all the other Owners of the Property. For the sole purpose of voting on Condominium Association matters, each Unit, by and through its Owner, shall be entitled to one vote. The one fifteenth (1/15) ownership in the General Common Elements shall, except as otherwise provided in the case of combination or subdivision, as allowed in Paragraph 2 above remain constant unless thereafter changed by unanimous written consent of all of the Owners together with the unanimous written consent of all of the holders of first deeds of trust and mortgages. Each Unit and the undivided interest in the General Common Elements appurtenant thereto shall together comprise one Unit which shall be inseparable and nonpartitionable, and may only be conveyed, leased, or devised subject to the conditions, and obligations hereof. Every gift, devise, bequest, transfer, encumbrance, or conveyance of a Unit shall include only the entire Unit, together with all appurtenant rights created by law and by this Declaration.

4. Nonpartitionability of General Common Elements. The General Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided. No Owner may bring any action for partition or division of the General Common Elements.

5. Description of Condominium Unit. Every deed, lease, mortgage, trust deed, will, or other instrument purporting to convey an interest therein may legally describe a Unit by its identifying Unit number and symbol followed by the words "Riverside Plaza Lot H Condominiums" with further reference to the Map or Plat thereof and the recorded Declaration as may be amended from time to time and filed for record. Every such description shall be good and sufficient for all purposes, and shall convey, transfer, encumber, or otherwise affect not only the Unit but also the General Common Elements appurtenant thereto. Each such description shall be construed to include, subject to all of the terms and provisions of this Declaration, a non-exclusive easement for ingress and egress and use of the General Common Elements.

6. Encroachments, Easements, and Disclosures.

(a) In the event that by reason of the construction, reconstruction, settlement, or shifting of the building, or the design or construction of any Unit, wall, door, or aperture, any part of the General Common Elements encroaches or shall hereafter encroach upon any part of any such Unit, wall, door, or aperture when installed, or any part thereof encroaches or shall hereafter encroach upon any part of the General Common Elements, or any portion thereof encroaches upon any part of any other Unit, valid easements for such encroachment and the maintenance thereof are hereby established and shall exist for the benefit of such Unit, wall, door, or aperture and the General Common Elements so encroaching so long as all or any part of the building shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner of any such Unit, wall, door, aperture or in favor of the Owners of the General Common Elements if such encroachment occurred due to the willful conduct of said Owner or Owners. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General Common Elements or the other Units.

(b) Easements are hereby declared and granted for utility purposes, including the right to install, lay, maintain, repair, and replace water mains and pipes, sewer lines, gas mains, television cables and antennae, telephone wires and equipment, and electrical conduits, wires, and similar equipment over, under, along, and on any part of the General Common Elements.

(c) All easements and rights described herein are easements appurtenant to and running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, mortgagee, and other person having an interest in said land, or any part or portion thereof.

(d) Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents; provided, however, that each such deed, mortgage, trust deed, or other evidence of obligation shall be deemed to create and reserve such easements and rights as aforesaid notwithstanding the absence therein of any references thereto.

(e) The Association, the Board, and the Managing Agent shall have non-exclusive right and easement to make such use of or enter into or on the General Common Elements, the Limited Common Elements, and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration.

(f) Each Owner shall have a non-exclusive easement for access between that Owner's Unit and the passage ways, roads and streets adjacent to the Common Interest Community, and that Owner's parking area and exterior access and all other easements which are a part of the General Common Elements. Each Owner shall have a non-exclusive easement in, on, and over the General Common Elements, including the General Common Elements within the Unit of another Owner, for horizontal and lateral support of that which is part of that Condominium Unit, for utility service to that Unit, including but not limited to, water, sewer, gas, electricity, telephone, and television service.

(g) Some of the General Common Elements are or may be located within a Unit, or may be conveniently accessible only through a particular Unit. The Association, Board, managing Agent and each Owner shall have an easement, which shall be exercised for any Owner by the Association, the Board or the Managing Agent, as its agent, for access through each Unit and to all General Common Elements, from time to time, during such reasonable hours as may be necessary for the location, placement, existence, maintenance, repair and replacement of any of the General Common Elements located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Unit, or for making repairs or replacement pursuant to this Declaration. 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, the Board or the Managing Agent, shall be a common expense of each of the Owners. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements, or from action taken to comply with any law, ordinance or order of any governmental authority, unless so determined by the Board. Restoration of the damaged improvements shall be to substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, tenant, or guest, such Owner shall be solely responsible for the costs and expenses of repairing such damage. An Owner of any Unit containing a General Common Element shall indemnify and hold the Association harmless for any damage resulting from the presence of said General Common Element.

(h) The easements, uses and rights herein created for an Owner shall be appurtenant to the Condominium Unit of that Owner, and all conveyances of and other instruments affecting title to a Condominium Unit shall be deemed to grant and reserve the easements, uses and rights as provided for herein, even though no specific reference to such easements, uses and rights appear in any such conveyance.

(i) Declarant hereby advises each prospective Owner that a portion of the property lies within the 100 year flood plain and thus on a seasonal basis in the spring after a high snow year may be subject to flooding Declarant further advises each Owner to obtain flood insurance protecting their personal property against such hazards. Insurance coverage, including flood insurance, on any improvements constructed by an Owner, and on the furnishings in the improvements, as well as insurance coverage against loss from theft on all personal property, and casualty and public liability insurance coverage for each individual Owner, not acting by the Association, with respect to the common area, shall be the responsibility of each respective Owner. Each Owner shall comply with any and all relevant terms and conditions concerning flood plain issues set forth in the Municipal Code of the Town of Basalt, and the Covenants, Conditions, and Restrictions of Ute Center Subdivision. Declarant represents that all spaces as originally built and that are heated and intended for occupancy by persons for residential use are at an elevation in excess of that of the flood plain, as designated by FEMA

(j) Declarant further advises and discloses to each prospective Owner that Guy & Associates finished garage floor elevations are approximately 6586.5 feet for Lot H. Page 7 or 11 of the P.U.D. documents labeled Ute Center P.U.D. 100-year Floodplain, states "Floodwaters will reach a maximum pond elevation of 6587.1 feet (Drawing datum) in the lower section of the development." See further documents prepared by Wright Water Engineers, Inc., Glenwood Springs, Colorado, dated May 31, 1990.

7. Separate Assessment and Taxation--Notice to Assessor. Declarant shall give written notice to the Assessor of Eagle County, Colorado, of the creation of condominium subdivision of the Property as is provided by law, setting forth the description of the Units, so that each Unit and the undivided interest in the General Common Elements appurtenant thereto shall be separately assessed thereafter for all taxes, assessments, and other charges of the State of Colorado or of any political subdivision or of any special improvements district or of any other taxing or assessing authority. In the event that for any period of time, any taxes, assessments, or other charges of any taxing or assessing authority are not separately assessed to each Unit Owner, but are assessed on the Property as a whole, then each Unit Owner shall pay one fifteenth (1/15) thereof in accordance with that Owner's one fifteenth (1/15) ownership interest.

8. Title. A Unit may be held and owned by more than one person as joint tenants or as tenants-in-common, or in any real property relationship or ownership form allowed under the laws of the State of Colorado.

9. Use of General Common Elements. Each Owner shall be entitled to exclusive ownership and possession of that Owner's Unit. Each Owner may use the General Common Elements subject to the terms and provisions of this Declaration and the rules of the Association as may be in effect as amended from time to time in accordance with the purposes for which the General Common Elements are intended, without hindering or encroaching upon lawful rights of the other Owners. Rules of the Association may be amended from time to time by a majority vote of the Unit Owners.

10. Use and Occupancy.

(a) Each Owner understands and agrees that the Condominium Project is a mixed use Building. Each Unit may be used and occupied only for residential purposes except that Units 513, 514 and 515 are also allowed restaurant, office and/or other commercial uses as well as residential use, but only as may be lawful and allowable under applicable laws, ordinances, and rules of any lawful public authority including conditions imposed upon the Condominium Project by the Town of Basalt at the times of governmental approval thereof and ordinances of the Town of Basalt.

> Note: The present unit boundaries delineated on the Plat dividing the air spaces between Unit 513, 514 and 515 merely legally divide such units and do not physically or structurally divide such units. None of these three units may be held in separate ownership from the other two unless demising walls complying with all requirements of the Uniform Building Code are actually constructed, physically dividing any unit to which title is held separately from any other of these three units.

(b) No "For Sale" or "For Rent" signs, advertising, or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be approved in writing by the Board. However, signs for commercial uses that comply with the Town of Basalt code shall be allowed.

(c) There shall be no obstruction of the General Common Elements nor shall anything be stored in the General Common Elements without the prior written consent of the Board. For purposes of maintenance, repair, alteration, and remodeling, an Owner of a Unit shall be deemed to own the interior non-supporting walls and the materials thereon (such as, but not limited to, plaster, drywall, paneling, wallpaper, paint, wall, and floor coverings).

(d) Each Unit Owner shall be obligated to maintain and keep that Owner's Unit, its windows and doors, including exterior and interior surfaces thereof in good, clean order and repair and the occupant of any Unit being used in a commercial manner shall keep that portion of the General and Limited Common Elements adjacent to such Unit in good and clean order and repair on a daily basis.

(e) Nothing shall be done or kept in any Unit or in or upon the General or Limited Common Elements which will increase the rate of insurance over the intended mixed use of residential and restaurant/commercial for which the Real Estate is presently zoned, on the building, or contents thereof, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in that Owner's Unit or in or upon the General or Limited Common Elements which will result in the cancellation of or increase in premiums of insurance on the building, or contents thereof, or which would be in violation of any law. No waste shall be committed anywhere in the building.

(f) Owners shall not cause or permit window coverings on the inside of any window that is other than white or off white in color nor shall anything to be hung or displayed on the outside of windows or placed on the outside walls of the building and no sign or lettering, awning, canopy, or radio or television antenna shall be affixed to or placed upon the windows, exterior walls, or roof or any part thereof, without the prior written consent of the Board.

(g) No animals, or birds of any kind shall be raised, or bred in any Unit or in the General or any Limited Common Element except as allowed in the Rules set forth in Exhibit "A" hereof, which rules may be amended from time to time by a vote of a majority of the Unit Owners.

(h) No noxious or offensive activity shall be carried on in any Unit, in the General or Limited Common Elements, or anywhere on the Property, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants. No unreasonable amount of odor or noise shall be allowed to escape from or be emitted from any Unit nor shall anything be permitted to be done in any Unit in any way tending to create a nuisance or to disturb any other Owner's Unit. No loud music or noise, that might tend to annoy or disturb other Unit Owners shall be permitted.

(i) Nothing shall be done in any Unit or, in or to the General or Limited Common Elements which will impair the structural integrity of the building or which would structurally change the building, except as otherwise provided herein, nor shall anything be altered or constructed in or be removed from the General or Limited Common Elements except as otherwise herein provided or otherwise permitted in writing by the Board.

(j) The Owner of any Unit shall be permitted to construct, improve, change, or alter the interior of such Unit (and any portion of the General Common Elements contiguous to, and exclusively serving such Unit, if the same is not visible in any manner on the exterior of the building), and:

(i) The structural integrity of the building will not thereby be impaired;

(ii) The value of the building will not be reduced thereby nor will an easement thereon or thereto be impaired;

(iii) The common assessments payable by the other Unit Owners hereunder are not increased directly or indirectly as the result of such construction, improvement, change, or alteration;

(iv) Such work will be done at the sole cost and expense of the Owner or Owners benefited and in full compliance with all applicable laws, ordinances, and regulations and the provisions of the Declaration; provided that in the event of a dispute with regard thereto, such work shall be done by the Association, and the costs thereof specially assessed in an equitable manner in proportion to the benefits received by the Units benefiting therefrom;

(v) The boundaries of such Unit, as shown on the Condominium Map, will not thereby be changed or altered except as otherwise allowed in Paragraph 2 hereof; and

(vi) Such Owner shall indemnify all Owners of other Units from any and all claims, liens, liabilities, suits, or demands whatsoever relating to or arising out of such work except insofar as any claim is waived and released as provided in this Declaration.

(k) No clothes, sheets, blankets, laundry of any kind, or other articles of personal property shall be placed or exposed on any part of the General or Limited Common Elements. The General and Limited Common Elements shall be kept free and clear of rubbish, debris, and other unsightly materials.

(l) There shall be no lounging furniture, bicycles, wagons, vehicles, benches, chairs, skis or sporting equipment, tethered dogs or cats, or other personal property on any part of the General Common Elements.

(m) Each Owner hereby waives and releases any and all claims which that Owner might otherwise have against any other Owner, the Association, the officers, and members of the Board, the Declarant and their respective officers, employees, and agents, without limiting the generality of Paragraph 12(g) below, for damages to the General or Limited Common Elements, the Units, or to any personal property located in the Units or General or Limited Common Elements, caused by fire or other form of casualty which is fully covered by insurance.

(n) If, due to the act or neglect of an Owner, or of a member of an Owner's family or of a guest, tenant, licensee or invitee, or other authorized occupant or visitor of such Owner, damage shall be caused to the General or Limited Common Elements or to a Unit or Units owned by others, including but not limited to any furnace or utility room, heating equipment, pipes, ducts, apparatus, or other equipment, or maintenance, repairs, or replacements shall be required which would otherwise be a common expense, then to the extent not covered by insurance, such Owner shall pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Board. Neither the failure of the Board to require such payment, nor any disagreement regarding the extent of payment required pursuant to the Board's determination hereunder, shall give rise to any claim or cause of action against the Board or its members by any person, provided that nothing contained in this subparagraph shall prohibit a Unit Owner from exercising any rights or remedies provided by law as against any person causing any damage to that Owner's Unit.

(o) No Owner shall overload the electric wiring or unreasonably contribute to such overload, or operate any machines, appliances, accessories, or equipment in such manner as to cause, in the judgment of the Board, a hazard to the safety of Owners and occupants of and invitees upon the Property.

(p) Parking of any and all vehicles on the Common Interest Community shall be subject to the matters set forth in the documents and regulations of the Town of Basalt, Ute Center Subdivision and as set forth in the rules in Exhibit "A" hereto.

11. Termination of Mechanic's Lien Rights and Indemnification. After the completion of the improvements generally shown on the Map, no labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Unit Owner or such Owner's agent or such Owner's contractor or subcontractor shall be the basis for filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against the General Common Elements, except that express consent shall be deemed to be given by the Owner of a Condominium Unit to the Managing Agent or the Board in the case of emergency repairs. Labor performed and materials furnished for the General Common Elements if duly authorized by the Managing Agent or the Board of Directors in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner, and shall be the basis for the filing of a lien pursuant to law against each of the Condominium Units in the Common Interest Community. The provisions herein contained are subject to the rights of the Board as set forth in this Declaration.

In the event a lien is effected against the Condominium Units, the Owner of any Condominium Unit may remove their Condominium Unit from the lien by payment of the amount attributable to the Condominium Unit so affected, computed by applying the ownership interest set forth in this Declaration. Subsequent to payment, discharge, or other satisfaction, the Condominium Unit shall be released from the lien paid, satisfied, or discharged. Partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce the lienor's rights against any Condominium Unit not so released or discharged.

Each Owner shall indemnify and hold harmless each of the other Owners from and against all claims and liability arising from the claim of any lien against the Unit of any other Owner or against the General Common Elements for construction performed or for labor, materials, services, or other products incorporated in that Owner's Unit at such Owner's request or with such Owner's consent. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which labor was performed, or materials furnished, the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorneys' fees. If not promptly paid, the Association may proceed to collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

12. Administration and Management.

(a) The administration and management of the Condominium Project shall be governed by the Association acting in accordance with the Articles of Incorporation and Bylaws of the Association, subject to this Declaration. Each Unit Owner shall be a member of such Association, which membership shall automatically terminate without any further action upon the sale or other disposition by such member of the fee interest in that member's Unit, at which time the new Unit Owner shall automatically become a member hereof.

(b) Any terms or provisions of the Bylaws which may be inconsistent with this Declaration shall be null and void and of no force and effect. The provisions of this Paragraph 12 cannot be amended except by unanimous consent of the Board and the Unit Owners.

(c) The Association shall be governed by the Executive Board, hereinafter referred to as the ("Board"), as provided in the Bylaws of the Association. The Association shall have the power to engage the services of a manager or managing agent, herein referred to as the ("Managing Agent"), who may be any person, firm, or corporation selected by the Board upon such terms and compensation as the Board deems fit and to delegate to such manager or managing agent any of its routine daily operating decisions.

(d) The Board shall always consist of not less than one (1) nor more than three (3) persons. Cumulative voting for members of the executive Board shall be allowed.

(e) If any Unit is owned by more than one (1) person, the voting rights with respect to such Unit shall not be divided, but shall be exercised as if the Unit Owners consisted of only one (1) person in accordance with the proxy or other designation made by the Owners constituting each Unit Owner.

(f) The Board may, from time to time, adopt or amend such reasonable rules and regulations governing the operation, maintenance, beautification, parking, and use of the General and Limited Common Elements and the Units, not inconsistent with the terms of this Declaration, as it deems proper. All Owners shall conform to, and abide by, such reasonable rules and regulations. Written notice of such rules and regulations shall be given to all Owners. A violation of such rules or regulations shall be a violation of the terms of this Declaration.

(g) The members of the Board and the officers and employees of the Association shall not be liable to the Owners for any mistake of judgment, or any acts or omissions made in good faith as such Board members, officers, or employees. The Owners shall indemnify and hold harmless each of such persons against all contractual liability to others arising out of contracts made by such person on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the express provisions of this Declaration. The liability of any Owner arising out of any contract made by such persons or as the result of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as that Owner's percentage interest in the General Common Elements. Each agreement made by such persons and for which indemnity is provided hereunder shall be deemed to have been executed by such persons expressly as agents for the Association.

(h) The Association is hereby irrevocably appointed attorney-in-fact for the Owners and each of them to manage, control, and deal with the interest of each Owner in the General Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder, and to exercise all of its rights hereunder, to deal with the Common Interest Community on its destruction or obsolescence as hereinafter provided, and to grant easements through any portion of the General Common Elements. The acceptance by any person of any interest in any Condominium Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer, and regulate the Common Interest Community, and to perform all of the duties required of it. Notwithstanding the foregoing, and subject to the provisions contained in this Declaration (unless at least sixty percent (60%) of the first mortgagees of Condominium Units, based on one (1) vote for each first mortgage owned), and one hundred percent (100%) of the Owners have given their prior written approval, the Association shall not be empowered or entitled to:

(i) by act or omission seek to abandon or terminate the Common Interest Community;

(ii) change the pro rata interest or obligations of any Condominium Unit for the purpose of levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) partition or subdivide any Condominium Unit;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer (excluding the granting of easements for public utilities or other public purposes consistent with the intended use of the General Common Elements) any of the General or Limited Common Elements; and

(v) use hazard insurance proceeds which have been received for loss to the Common Interest Community (whether Units or General or Limited Common Elements) for other than repair, replacement or reconstruction thereof.

13. Reservation for Access - Maintenance, Repair, and Emergencies. The Owners shall have the irrevocable right, to be exercised by the Managing Agent or Board, to have access to each Unit from time to time during such reasonable hours as may be necessary for the inspection, painting, maintenance, repair, reconstruction, or replacement of any of the General or Limited Common Elements therein or accessible therefrom, or at any time for making emergency repairs therein necessary to prevent damage to the General Common Elements or to another Unit or Units, or to investigate any indication that such repairs may be necessary or desirable, or when such access is reasonably calculated to protect the health, safety or property of any Owner or occupant.

Damages to the interior or any part of a Unit or Units resulting from the painting, maintenance, repair, emergency repair, reconstruction, 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, subject, however, to the provisions of this Declaration. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

Subject to the provisions of this Declaration, and except as herein otherwise specifically provided, all maintenance, repairs, reconstruction, and replacements to the General Common Elements, whether located inside or outside of the Units, shall be the common expense of all of the Owners.

14. Grantees. Each grantee of the Declarant, by the acceptance of a deed of conveyance, accepts the deed subject to all terms, provisions, easements, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration and the Articles of Incorporation and Bylaws of the Association, and the provisions of the Colorado Common Interest Ownership Act, as at any time amended, and all easements, rights, benefits, and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate as though the provisions of this Declaration were recited and stipulated at length in each and every deed.

15. Insurance.

(a) The Board shall obtain and maintain at all times the following insurance coverage provided by companies duly authorized to do business in Colorado:

(i) Insurance for the Property against loss or damage by fire, flood, and such other hazards as are covered under standard extended coverage, vandalism, and malicious mischief endorsements for the full insurable replacement cost of the General Common Elements, Limited Common Elements and the Units as originally constructed and such other casualty insurance as the Board deems advisable for the protection of the General and Limited Common Elements and the Units. The adequacy of such insurance in relation to "full replacement value" shall be reviewed at least annually by the Board. The insurance shall be carried in blanket policy form naming the Association the insured, as attorney-in-fact for each of the Owners in the ownership interests established herein. All such policies of insurance shall insure additions, alterations, or improvements made by the Declarant. All such policies of insurance shall contain standard mortgage clause endorsement in favor of the mortgagee or trust deed holder of each Unit and that such policy shall not be terminated, canceled, or substantially modified without at least twenty (20) days' prior written notice or such different time period as is customarily allowed in

Colorado, to the mortgagee of each Unit and to each Owner. All such policies of insurance shall provide that the insuror waives its rights to subrogation under the policy against any Unit Owner or member of that Unit Owner's household.

(ii) Comprehensive public liability and property damage insurance in such limits as the Board shall deem desirable insuring the Association, the members of the Board, the Managing Agent, and their respective officers, agents, and employees, and the Owners from any liability in connection with any act or omission performed by any such person directly or indirectly pursuant to the provisions of this Declaration.

(iii) Worker's compensation insurance and employer's liability insurance as may be necessary to comply with applicable laws, and such other forms of insurance as the Board shall elect to effect.

(iv) All insurance policies affecting the Condominium Project shall comply with the provisions of C.R.S. 38-33.3-313 as it may be amended from time to time.

(b) Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Board shall be common expenses.

(c) The Board may (but shall not be required to), in its sole discretion, secure insurance policies that will provide for one or more of the following:

(i) With respect to the insurance provided for in (a)(ii) of this subparagraph, for coverage of cross liability claims of one insured against another;

(ii) With respect to the insurance provided for in (a)(i) of this subparagraph, a waiver of subrogation by the insurer as to any claims against the Association, the Managing Agent, and their respective agents, officers, employees, licensees, and invitees;

(iii) With respect to the insurance provided for in (a)(i) of this subparagraph, that the policy cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual Owners, or on account of the conduct of any officer or employee of the Association without, in the latter case, prior demand in writing that the Association cure the defect;

(iv) With respect to the insurance provided for in (a)(i) of this subparagraph, that the insurer shall not have the option to restore the premises, if the Property is sold as provided in this Declaration;

(v) With respect to the insurance provided for in (a)(i) of this subparagraph, that any "no other insurance" clause in such policy exclude policies of insurance maintained by any Owner or Owner's mortgagee from consideration and that no such insurance policy coverage under (a)(i) of this subparagraph be brought into contribution with insurance purchased by Owner or Owner's mortgagee.

(d) Any Owner may obtain additional insurance at Owner's own expense; provided that:

(i) A copy of each such policy (except for a policy with coverage only as provided in (f) of this subparagraph) is furnished to the Board; and

(ii) No such insurance may be maintained which would adversely affect or invalidate any insurance (or any recovery thereunder) carried by the Board or decrease the amount which the Board would realize under any insurance policy the Board is maintaining; and

(iii) Such insurance policy shall contain a waiver of subrogation as to claims against the Association, the Managing Agent, the Owners and their respective agents, officers, employees, licensees, and invitees.

(e) The Board may engage the services of any bank or trust company authorized to do business in Colorado to act as trustee or agent on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds under any policy provided for in (a)(i) of this paragraph resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of this Declaration. In the event of any loss resulting in the destruction of the major portion of one or more Units, the Board shall engage an institutional trustee as aforesaid upon the written demand of the mortgagee or Owner of any Unit so destroyed. The fees of such institutional trustee shall be common expenses.

(f) Insurance covering improvements and additions to individual Units as well as furnishings, contents and other items of personal property within each individual Unit belonging to an Owner, and casualty and public liability insurance coverage for each individual Unit and Owner shall be the responsibility of the Owner thereof.

(g) The amount by which any premium for insurance maintained by the Board and/or Unit Owner is increased as a result of any activity or act of such Owner (other than restaurant and/or commercial uses which uses are allowed for Units 513, 514 and 515), or of any guest, invitee, licensee, or tenant of such Owner, or the amount of any premium on new insurance which is purchased by the Board solely as a result of any activity or act of such Owner, or of any guest, invitee, licensee, or tenant of such Owner shall be paid in full by that Owner. The written statement of the insurance carrier to the effect that a specific rate or increase is attributable to such activity shall be conclusive as to such increase and the amount thereof.

16. Repairs, Maintenance, Replacements, Additions, Alterations, and Improvements of the Common Elements. There shall be no alterations, additions to, or improvements on the General Common Elements (other than for purposes of repair, maintenance, replacement, or restoration of portions thereof) requiring an expenditure in excess of Twenty Five Thousand Dollars ($25,000.00) without the prior approval by affirmative vote of sixty percent (60%) of the Unit Owner votes . There shall be no such required approval of or limitation upon expenditures required for the repair, maintenance, replacement, or restoration of such General Common Elements. Notwithstanding the preceding, alterations, additions, or improvements to the General Common Elements in excess of Twenty Five Thousand Dollars ($25,000.00) can be made upon the affirmative of less than sixty percent (60%) of the Unit Owners, so long as those Unit Owners not affirmatively voting for the alteration, addition, or improvement do not pay a share thereof greater than what their share would have been if the alteration, addition, or improvement cost only Twenty Five Thousand Dollars ($25,000.00).

17. Maintenance Duties. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own, and shall have the right and obligation to maintain, repair, alter and remodel the interior nonsupporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring, not including the subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, and the Unit's doors and windows, and any and all new additions to a Unit made by the owner thereof, including, without limitation, any new fence or other structure to be constructed enclosing a patio, balcony, yard or deck area, and the Limited Common Elements associated with the use and occupancy of the Unit, but only if approved in writing by the other Owner. No Owner shall, however, make any changes or alterations of any type or kind to the exterior surfaces of the doors or windows of that Owner's Unit or to any General Common Elements, including, but not limited to, the exterior portions of that Owner's Unit. An Owner shall not be deemed to own lines, pipes, wires, conduits or systems, (hereinafter referred to as "utilities"), running through that Owner's Unit which serves any other Unit, except as a tenant-in-common with the other Owner. Each Owner shall keep and maintain the utilities and equipment in that Owner's Unit which provide services exclusively for that Unit. Each Owner shall have the obligation to replace any finishing or other materials removed with similar types or kinds of materials. Each Owner shall maintain and keep in good repair, and in a clean, safe and attractive condition, the interior of that Owner's Unit, including the fixtures, doors and windows thereof, and the improvements affixed thereto, and such other items and areas as may be required by this Declaration or the Bylaws. Also, an Owner shall maintain, clean and keep in a neat and clean condition the fireplace within that Owner's Unit, and keep in a neat and clean condition and free and clear of snow, ice and any accumulation of water,

the deck, yard, porch, roof, balcony and/or patio area, if any, adjoining or leading to a Unit, some of which areas are Limited Common Elements appurtenant to such Owner's Condominium Unit. All fixtures, appliances and equipment installed within a Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph the Board or the Managing Agent may fulfill the same and charge such Owner a special assessment therefor, which shall be immediately due and payable. Any expense incurred by an Owner under this paragraph shall be the sole expense of that Owner.

18. Assessment for Common Expenses.

(a) The Association shall levy and collect from each Owner at the closing when the Owner acquires a Unit the amount determined by the Board as the Owner's capital contribution. Such sum shall be used by the Association for working capital, for application against the delinquent account of the Owner, and for emergency needs. The initial capital contribution shall be transferred to the New Owner on the books and records of the Association upon the sale or transfer of the Owner's Unit, less any amount then due by the Owner to the Association, and the Owner and the Buyer shall adjust the amount between themselves by settlement sheet adjustment at their closing. Any deficiency amount in any Owner's account shall be promptly restored. The initial capital contribution shall not relieve an Owner from paying assessments when due.

(b) Declarant, for each Unit owned by Declarant, and for and as the Owner of the Condominium Project and every part thereof, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association quarterly or other periodic assessments made by the Association pursuant to vote of the Board for the purposes provided in this Declaration, for any sums assessed by the Association pursuant to the Covenants, Conditions, and Restrictions of Ute Center Subdivision recorded in Book 538 at Pages 35 et. seq. in the office of the Clerk and Recorder of Eagle County, Colorado, as amended from time to time and for special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner provided in this Declaration, and by the Articles of Incorporation and Bylaws of the Association.

c) The total assessments against all Units shall be assessed to the Unit Owners according to each Unit Owner's 1/15th portion of ownership and shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements and utilities and maintenance of the elevator serving the Building, the furnishing of such utility services (that are not be separately furnished and metered to the Units), which estimates may include, among other things: taxes and special assessments, until the Units are separately assessed as provided herein, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, except such premiums as are paid for by the Association for which direct reimbursement is made by a Unit Owner or Owners; common lighting and heating and common water charges; trash collection, sewer service charges; repairs and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

(d) At least once each year, the Board shall estimate the annual budget for common expenses (the "annual budget") including the total amount required for the cost of wages, materials, insurance, services, and supplies which will be required during the ensuing calendar year for the rendering of all services in connection with the General Common Elements, together with a reasonable amount considered by the Board to be necessary for reserve for contingencies and replacements, and shall notify each Unit Owner in writing as to the amount of such estimate with reasonable itemization thereof. Said annual budget shall be assessed to the Unit Owners according to each Unit Owner's portion of ownership. On or before the 1st day of April of each calendar year commencing the next April after the date this document is recorded, the Board shall supply to all Unit Owners an itemized accounting of the common expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided and showing the net amount over or short of the actual expenditures. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's portion of ownership to the next installments due from Owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each Unit Owner's percentage of ownership to the next two (2) installments due after rendering of the accounting. The Board shall create and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserve. If said annual budget proves inadequate for any reason, including non-payment of any Owner's regular or special assessment, the Board may at any time pledge future assessments to become due to the Association as collateral for a loan or loans to pay for such extraordinary expenditures or levy a further assessment, which shall be assessed to the Unit Owners according to each Unit Owner's portion of ownership as described herein. The Board shall serve notice of such further assessment to all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the next payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted quarterly amount.

(e) The failure of the Board to prepare or serve the annual or adjusted budget on the Owners shall not constitute a waiver or release in any manner of the Owner's current obligation to pay the maintenance and other costs and necessary reserves as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, the Owners shall continue to pay the assessment payment which is due more than ten (10) days after such new annual or adjusted budget shall have been mailed or delivered.

The Board or the Managing Agent acting for and on behalf of the Board shall deliver copies of the budget, and accurate books and records of receipts, expenditures, assets, and liabilities of the Association, and the obligations of each and all Owners thereto. The same shall be open for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by any Owner. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held in trust for the benefit, use, and account of each of the Owners proportionate to their respective ownership interest.

(f) Until such time as the Board shall have provided its first annual budget, or for such other period as the Board determines, the Board shall have the right to assess the common expenses, as provided above.

(g) The following expenses or charges incurred by the Board (and/or Unit Owners) shall be specially assessed to the individual Owner to which such expense or charge is applicable (in addition to any other costs, charges, or expenses which by law or the terms of this Declaration are payable by an individual Owner):

(i) The amount by which any premium for insurance maintained by the Board and/or Unit Owner is increased as a result of activity other than as allowed pursuant to this Declaration.

(ii) The monthly and other fee or compensation and any other cost or sum which the Board or Association is obligated to pay to the Managing Agent with respect to a Unit under the terms of any agreement with such Managing Agent.

(iii) Any expense specifically attributable to a certain Unit or specifically attributable to a certain Unit's use of the General Common Elements other than as allowed pursuant to this Declaration.

(h) In addition to the remedies or liens provided by law, or by this Declaration, if an Owner is in default in the quarterly payment of any charge or assessment for twenty (20) days, the Board may bring suit for and on behalf of the Association and as representative of all Owners, to enforce collection thereof or to foreclose the lien therefor as provided by law or by this Declaration; and there shall be added to the amount due from and after the due date all of the collection costs of said suit, including all court costs, together with interest at the greater of the rate of eighteen percent (18%) per annum from the due date thereof, or ten percent (10%) in excess of the rate per centum charged by Citibank of New York or its successor at the time of the assessment, plus a late charge of fifty dollars ($50.00) and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments or other charges provided for hereby by non-use of the General Common Elements or any portion thereof or abandonment of that Owner's Unit.

(i) Assessments or other charges assessed against a Unit shall be the personal and individual obligation of the Owner or Owners thereof and such Owners shall be jointly and severally liable therefor.

19. Lien for Non-Payment of Common Expenses and Other Obligations. All sums assessed but unpaid for the share of common expenses chargeable to any Unit and all sums specially assessed hereunder to any Unit, but unpaid, and any and all other sums due to the Association and unpaid by a Unit Owner under the terms of this Declaration, shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for:

(a) Valid tax and special assessment liens on the Unit in favor of any lawful governmental assessing authority; and

(b) All sums unpaid on any first mortgage or first deed of trust of record in Eagle County, Colorado, including all unpaid obligatory advances to be made pursuant to such encumbrances except for an amount equal to the common expense assessments based on a periodic budget adopted by the Association pursuant to the Colorado Common Interest Ownership Act and which would have become due in the absence of acceleration, during the six (6) months immediately preceding institution of an action to enforce the lien, but in no event shall such priority for the six-month (6) period exceed one hundred fifty percent (150%) of the average monthly assessment during the immediately preceding fiscal year multiplied by six, and except for attorneys' fees and costs incurred in an action to enforce the lien. All other or junior lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

The recording of this Declaration constitutes record notice and perfection of the assessment lien as provided in the Colorado Common Interest Ownership Act. However, to further evidence such lien, the Board or Managing Agent at the Board's direction may prepare a written notice setting forth the amount of such unpaid indebtedness, the general nature of the indebtedness, the name of the Owner of the Unit, and a description of the Unit. Such a notice shall be signed by a member of the Board or by the Managing Agent at the Board's direction and may be recorded in the real property records in the office of the Clerk and Recorder of Eagle County, Colorado. Such lien shall attach from the date of the failure of payment. Such lien may be enforced by foreclosure of the defaulting Owner's 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 proceedings, the Owner shall be required to pay the costs and expense of such proceedings, the costs and expenses of filing the notice or claim of lien and all reasonable attorneys' fees and court costs. The Owner shall also be required to pay to the Association the quarterly assessment(s) for the 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 participate as a bidder at such foreclosure or other legal sale and to acquire and hold, lease, mortgage, and convey the same, or otherwise deal therewith.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any unpaid common expenses or other assessments or charges 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 which that encumbrancer would have had but for such Association lien for unpaid common expenses and assessments.

The Association shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than sixty (60) days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance, a current address for the delivery by mail of such notice, and request to be so notified. However, the Association shall not be liable for any failure to report to any encumbrancer notice of any unpaid assessments nor shall the lack of such notice affect, delay, or hinder the time period in which the Association may proceed to exercise any remedies available to it to collect such unpaid and delinquent assessments.

All sums assessed for common expenses which remain unpaid for thirty (30) days from and after the due date thereof shall bear interest at a rate equal to the greater of eighteen percent (18%) per annum or ten percent (10%) in excess of the rate per annum charged by Citibank of New York or its successor at the time of such assessment, but in no event in excess of such amount as is legally allowable, and shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit except for:

(a) Valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and

(b) A lien for all sums unpaid on a first mortgage or on any mortgage to Declarant, duly recorded in the Eagle County, Colorado, real estate records, including all unpaid obligatory advances to be made pursuant to such mortgage and all amounts advanced pursuant to such mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any Unit after the Covenants, Conditions, and Restrictions and this Declaration shall have been recorded in said records shall be conclusively deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such lien.

20. <u>Liability for Common Expense and Other Charges Upon Transfer of a Unit is Joint.</u> Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Unit, or their respective designees, the Association, by its Managing Agent, or if there is none, then by the financial officer of the Association, shall issue a written statement setting forth the amount of the unpaid special assessments and common expenses, and other charges due hereunder, if any, with respect to the subject Unit, the amount of the current quarterly assessments and the date that such assessments become due, and credit for any advance payments of common assessments, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness is complied with within twenty (20) days after receipt thereof, all unpaid common expenses and other charges due hereunder which become due prior to the date of making such request shall be subordinate to the lien, if any, of the person or entity requesting such statement.

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for that Unit's proportionate share of the common expenses and for the special assessments and other charges due hereunder 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 seventy-five dollars ($75.00), and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent, or if there is none, then by the financial officer of the Association setting forth the amount of the unpaid quarterly and special assessments, and any other charges due hereunder, if any, with respect to the subject Unit, the amount of the current quarterly assessment, the date that such assessment becomes due, and credits for any advance payments, which statement shall be conclusive upon the Association. Unless such request for such a statement shall be complied with within twenty (20) days after receipt of such request, then such requesting grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for any unpaid assessments or other charges due hereunder against the subject Unit prior to said conveyance, but nothing herein shall serve to relieve the grantor of personal responsibility therefor. The provisions contained in this paragraph shall not apply to the initial sales and conveyances of the Units by Declarant, and such sales shall be free from any liens for common or special assessments to the date of conveyance thereof by Declarant.

21. Mortgaging a Condominium Unit - Priority. Any Owner shall have the right from time to time to mortgage or encumber that Owner's interest by deed of trust, mortgage, or other security instrument. A first mortgage or deed of trust shall be one which has first and paramount priority under applicable law. The Owner of a Unit may create junior encumbrances on the following conditions: (1) that any such junior encumbrance shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for common expenses, and other obligations created by this Declaration, the Articles of Incorporation, and the Bylaws of the Association; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of that mortgagee's right, title, and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of one or more of the members of the Board.

Notwithstanding anything contained in this Declaration to the contrary, the prior written approval of all holders of first Deeds of Trust on Units will be required for any of the following:

(a) An Amendment to this Declaration which changes the ratios of the assessments against Owners or amends any provision which specifically grants rights to mortgagees hereunder;

(b) The alienation, release, transfer, hypothecation, or other encumbrance of the common area after such common area has been conveyed to the Association subject to the Declarant's rights herein; except that the consent of mortgagees shall not be required for actions by the Association to:

(i) Grant easements, or

(ii) To lease or grant licenses.

(c) Removal of any of the property from the provisions of this Declaration; and

(d) The use of hazard insurance proceeds for any other purpose other than for the repair, replacement, or reconstruction of any damaged improvements.

22. Protection of Encumbrancer. Subject to the provisions of Paragraph 21 above, no violation or breach of or failure to comply with any provision of this Declaration, and no action to enforce any such provision, shall affect, defeat, render invalid or impair the lien of any first mortgage or other lien on any Condominium Unit taken in good faith and for value, and perfected by recording in the office of the Clerk and Recorder of Eagle County, Colorado, prior to the time of recording in such office, an instrument describing the Condominium Unit, and listing the name or names of the Owner of fee simple title to the Condominium Unit, and giving notice of such violation, breach or failure to comply; nor shall such violation, breach or failure to comply, or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such first mortgage or other lien, or the title or interest acquired by any purchaser on foreclosure of any such first mortgage or other lien, result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration; provided, however, that violation or breaches or failure to comply with any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof, or failure to comply herewith, with respect to such purchaser, that purchaser's heirs, personal representatives, successors or assigns.

23. Association as Attorney-in-Fact, Damage, Destruction, Obsolescence, and Sale. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property upon its destruction or obsolescence. Title to any 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 the Association their true and lawful attorney in their name, place, and stead for the purpose of dealing with the Property upon its destruction or obsolescence as is hereinafter 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 an Owner which may be necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the same to substantially the same condition in which it existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. The term "improvements" means any improvements forming a part of the Property, or any portion thereof, including any Unit. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, or replacements unless the Owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvements, or if for any reason such proceeds are not payable, and if such damage substantially affects not more than fifty percent (50%) of the square foot area of the building, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance, if any, and the proceeds of an assessment to be made against all of the Owners and their Units. Such deficiency assessment shall be designated a special assessment and made pro rata according to each Owner's interest as described herein and shall be due and payable within sixty (60) days after written notice thereof. The Association shall have full authority, right, and power, as attorney-in-fact, 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 each Owner's Unit and may be enforced and collected as is provided in this Declaration. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association by and through its Board shall cause to be recorded a written statement that the Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order, subject to C.R.S. 38-33.3-218, as it may be amended from time to time:

(i) For payment of taxes and special assessment liens in favor of any assessing entity and customary expenses of sale;

(ii) For payment of the balance of the lien of any first mortgage;

(iii) For payment of unpaid charges including attorneys' fees and costs of collection due hereunder and common expense, including all sums due under the terms of this Paragraph 23;

(iv) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

(v) The balance remaining, if any, shall be paid to the Unit Owner whose Unit is sold.

(c) (i) If more than fifty percent (50%) of the square foot area of the building is destroyed or substantially damaged. The Unit Owners may terminate the Common Interest Ownership Community in the manner provided by the Colorado Common Interest Ownership Act. In such case, 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 condominium project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map, the Certificate of Incorporation, and the Bylaws. The insurance settlement proceeds, if any, shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's interest and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Property. Such apportionment shall be based upon each Unit Owner's interest. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Subparagraphs (b)(i) through (v) of this paragraph. The provisions contained in this subparagraph shall not hinder the protection given to the first mortgagee or first deed of trust holder under a mortgage or deed of trust endorsement.

(ii) If, after such damage, the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more adopt a written plan for reconstruction, which plan has the unanimous written approval or consent 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 designated a special assessment, shall be made pro rata according to each Owner's percentage interest and shall be due and payable as provided by the terms of such plan, but not sooner than sixty (60) days after written demand thereof. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds, if any, 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 that Owner's Unit and may be enforced and collected as provided in this Declaration. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the 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 Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in Subparagraphs (b)(i) through (v) of this paragraph.

(d) The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more agree at any time that the Units are obsolete and adopt a plan for the renewal and reconstruction thereof, which plan must have the unanimous approval of all first mortgagees. If a plan for the renewal and reconstruction is adopted, then the expense thereof shall be payable by all of the Owners as common expenses; provided, however, that an Owner not a party to (if not approving) such plan for renewal and reconstruction may give written notice to the Association within thirty (30) days from the adoption of such plan to cancel such plan. If such plan is not canceled by adoption of an appropriate resolution by the Board, then the Unit shall be purchased according to the following procedures. If such Owner and the Association can timely agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days after the expiration of forty-five (45) days from the adoption of the plan. If the parties are unable to agree, the date when either party notifies the other that such party is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencing date, each party shall give notice of such nomination to the other party and each party shall nominate in writing a separate appraiser who shall be a licensed and accredited member of the Appraisal Institute or similarly designated and qualified. If either party fails to make such a timely nomination, the appraiser nominated shall, within five (5) days after such failure to the other party, appoint and associate with such appraiser another similarly designated appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the failure of one party to nominate an appraiser, are unable to agree as to the fair market value of the Unit, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two (2) persons, and from the names of the four persons so nominated, one shall be drawn by lot by any judge of any court of record in Eagle County, Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days after the determination of the fair market value, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in Subparagraphs (b)(i) through (v) of this paragraph.

(e) The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more may agree that the Units are obsolete, that the common interest community be terminated, and that the Property should be sold by the Unit Owners terminating the Common Interest Community in the manner provided by the Colorado Common Interest Ownership Act. In such instance, the Association by and through its Board, shall forthwith record a statement setting forth such fact or facts, and upon the recording of such statement 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 Condominium Map and the Certificate of Incorporation, and Bylaws. 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, each such account for the benefit of one Unit. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation 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 accounts without contribution from one account to another, for the same purposes and in the same order as is provided in Subparagraphs (b)(i) through (v) of this paragraph.

24. Condemnation.

(a) Consequences of Condemnation. If, at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Common Interest Community shall be taken, condemned by any public authority, or sold or otherwise disposed on in lieu of or in avoidance thereof, the provisions of this Paragraph 24 shall apply.

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

(c) Complete Taking. In the event the entire Common Interest Community is taken, condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interests in the General Common Elements; provided, however, that, if a standard different from the value of the Common Interest Community as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree or otherwise, in determining such share, the same standard shall be employed to the extent it is relevant and applicable.

(d) Partial Taking. In the event less than the entire Common Interest Community is taken, 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 among compensation, damages and other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(i) The total amount allocated to taking of or injury to the General Common Elements shall be apportioned among the Owners in proportion to their respective undivided interests in the General Common Elements.

(ii) The respective amounts allocated to the taking of or injury to a particular Unit and/or improvements and Owner had made within that Owner's Unit shall be apportioned to the particular Condominium Unit involved.

(iii) The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances.

If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Any distribution of the Condemnation Award made pursuant to this subparagraph shall be made by checks payable jointly to the Owners and their first mortgagees. Upon acquisition by condemnation, unless the decree otherwise provides, the ownership and assessment interest of any Unit that has been partially or completely taken must be reallocated to the remaining Units in proportion to the respective allocated interest of the Unit before the taking. Any remnant of a Unit remaining after part of a Unit is taken is thereafter a common element.

(e) Reallocation of Interests. Except as provided in Subsection (d) of this Paragraph 24, if part of a Unit is acquired by condemnation, the Association must distribute the award to compensate the Owner for the reduction in value of the Unit and that Owner's interest in the General and Limited Common Elements, whether or not any General or Limited Common Elements are acquired. Upon acquisition by condemnation, unless the decree otherwise provides:

(i) That Unit's ownership and assessment interests are reduced in proportion to the reduction in the size of the Unit; and

(ii) The portion of interests divested from the partially acquired Unit is automatically reallocated to that Unit, and to the remaining Units in proportion to the respective interests of that Unit before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced interests.

(f) Limited Common Elements. If part of the Common Elements is acquired by eminent domain, that portion of any award attributable to the Common Elements taken must be paid to the Association. Any portion of the award attributable to the acquisition of a Limited Common Element must be divided among the Owners of the Unit to which that Limited Common Element was allocated at the time of acquisition.

(g) Distribution. 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; provided, however, that in the event of a complete taking, such distribution shall be made in the same manner as is provided herein.

(h) Mortgage Notice. The Association shall give timely written notice to each first mortgagee of the commencement of any condemnation or eminent domain proceedings, and shall notify the first mortgagees in the event of the taking of all or any part of the General Common Elements.

(i) 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, and such Owner's interest in the General Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary, and execute such documents as are necessary, to reflect such termination. Any reallocation of ownership and assessment interests shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

25. Acquisition of Property for Common Maintenance Use. The Association may acquire and hold for the use and benefit of all of the Owners, real, tangible, and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such Property shall be owned by the Owners in the same proportion as their respective interests as described

herein and shall not be transferable except with a transfer of a Unit. A transfer of a Unit shall transfer ownership of the transferor's beneficial interest in such Property without any reference thereto. Each Owner may use such Property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Unit under foreclosure shall entitle the successor in title to the beneficial interest in such Property associated with the foreclosed Unit.

26. Registration by Owner of Mailing Address. Each Owner shall register that Owner's mailing address with the Association, and except for budget statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, return receipt requested, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other writings intended to be served upon the Declarant, Board, or the Association and shall be sent by certified mail, postage prepaid, return receipt requested to the Association at:

Riverside Plaza Lot H Condominiums
c/o Robert D. Ritchie
720 E. Hyman Avenue
Aspen, Colorado 81611

and to:

c/o the Association's attorney and registered agent

Douglas P. Allen
520 E. Cooper Street, Suite 230
Aspen, Colorado 81611

until such addresses are changed by notice of address change duly recorded in the office of the Clerk and Recorder, Eagle County, Colorado, and mailed to each Owner. All notices so mailed shall be deemed to be given and received when deposited in the United States mails as aforesaid.

27. Period of Condominium Ownership. The separate condominium estates created by this Declaration and the Condominium Map shall continue until this Declaration is revoked in the manner as is provided in this Declaration or until terminated in the manner as is provided in this Declaration.

28. Revocation. This Declaration shall not be revoked unless all of the Owners and all of the holders of all recorded mortgages and/or deeds of trust covering or affecting each of the Units unanimously consent or agree in writing to such revocation by instrument duly recorded.

29. Compliance with Provisions of Covenants, Conditions, and Restrictions, Declaration, Articles of Incorporation, and Bylaws of the Association. Each Owner shall strictly comply with the provisions of the Covenants, Conditions, and Restrictions of Ute Center Subdivision, this Declaration, the Articles of Incorporation, and Bylaws of the Association, and the reasonable rules and regulations of the Association, all as the same may be lawfully amended from time to time.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board in the name of the Association on behalf of the Owners the right, in addition to any other rights provided for in this Declaration: (a) to enter upon the Unit, or any portion of the Property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, and its employees or agents, shall not thereby be deemed guilty in any manner of trespass; and (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; and (c) to recover sums due for damages. Such remedies shall be cumulative and not exclusive of one another and shall be in addition to any other remedies available to the Board by law.

Failure to comply with any of these shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, along with costs of suit and reasonable attorneys' fees, by the Board in the name of the Association on behalf of the Owners, or by an aggrieved Owner. The Association may suspend any Owner's voting rights during any period or periods during which such Owner fails to comply with the rules or with any other obligation of such Owner required by the above-referenced documents.

30. Failure to Enforce. No terms, obligations, covenants, conditions, restrictions, or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches thereof may occur.

31. Amendments. This Declaration may be amended, changed, or modified due to a change in circumstances or in law, if there exists a reasonable basis for such amendment, change, or modification supported by objective criteria provided by a disinterested third party professional such as an engineer, surveyor, accountant, or appraiser, only by an instrument in writing setting forth such amendment, change, or modification, signed and acknowledged by those Unit Owners representing not less than seventy five percent (75%) of the ownership interests in the General Common Elements of the Condominium Project, provided however, no amendment may materially adversely affect any Unit or Units in favor of any other Unit or Units. If a Unit Owner claims an effect is adverse, then the other Unit Owners may prove it is not by providing objective criteria by a disinterested third party professional such as an engineer, surveyor, accountant, or appraiser. Notwithstanding the preceding, in no event may any amendment be adopted without the unanimous consent of all Unit Owners and all mortgagees having a bona fide first lien of record against any Unit, which amendment would change the allocation of condominium expenses or of undivided interests in the General Common Elements and any such amendment shall only be effective upon recordation of an instrument setting forth such amendment, duly signed and acknowledged by all the Unit Owners and mortgagees. No change, modification, or amendment which affects the rights, privileges, or obligations of the Declarant shall be effective without Declarant's written consent. No change, modification, or amendment which is in derogation of conditions imposed upon the improvement, use, and occupancy of the Condominium Project by the Town of Basalt shall be made without the consent of said City or governmental authority or their successor thereto with jurisdiction thereover. Any amendment to merely correct an obvious omission or typographical error or to resolve any conflict with applicable laws may be made at any time by the Board without the requirement to obtain the consent of any Unit Owner or mortgagee.

32. General.

(a) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby. All of the terms herein are hereby declared to be severable.

(b) The provisions of this Declaration shall be in addition and supplemental to the Colorado Common Interest Ownership Act 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) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform and equitable plan for the development and operation of a first class Condominium Project.

33. Right of First Refusal as to Units 513. 514 and 515 only. In the event any Owner of only Condominium Units 513, 514 or 515 shall wish to sell that Owner's Condominium Unit and shall have received a bona fide written offer from a prospective buyer, the remaining Owners of only Unit 513, 514 or 515 shall be given written notice thereof within five (5) days after receipt thereof from Owner wishing to sell, together with an executed copy of such offer to purchase setting forth all the terms thereof. Such notice and a copy thereof shall be delivered to the Managing Agent of the Association. Each of the remaining Owners of Unit 513, 514 and 515,

through the Managing Agent, shall have the right to purchase that Condominium Unit upon the same terms and conditions as set forth in the offer therefor. However, the first Owner to deliver written notice of such election to purchase to the selling Owner, together with the same amount of earnest money as is in the competing offer during the twenty (20) day period immediately following the delivery of the notice of the bona fide offer to purchase together with the written offer to purchase, shall have the right to purchase such Unit.

In the event any Owner of either Unit 513, 514 or 515 shall attempt to sell that Owner's Condominium Unit without affording to only the other Owners of Units 513, 514 and 515 the right of first refusal herein provided, such sale shall be voidable and may be voided by a certificate of noncompliance by the Managing Agent duly recorded in the office of the Clerk and Recorder of Eagle County, Colorado. However, in the event the Managing Agent has not recorded such a certificate of noncompliance within six (6) months from the date of recording in the case of a deed delivered in violation of this paragraph, such conveyance shall be conclusively deemed to have been made in compliance with this paragraph and no longer voidable.

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

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

The right of first refusal as provided herein, shall extend and run for eighty-nine (89) years from the date of this Declaration.

Except upon a transfer of title to a Public Trustee or to a first mortgagee, each Grantor of an affected Condominium Unit, upon transferring or conveying that Grantor's 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.

34. 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 33 above, and the purchaser or grantee under such deed in lieu of foreclosure of such Condominium Unit shall be thereupon and thereafter subject to the provisions of this Declaration and Bylaws. 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 33, but only after complying with the provisions of Paragraph 33, but its grantee shall be subject to all of the provisions thereof.

As to any of the affected Units, the following transfers are also exempt from the provisions of Paragraph 33, except that such persons or Owners who take under the following provisions shall be subject to all the provisions of the Paragraph 33 above.

(a) The transfer or conveyance to another Owner of a Condominium Unit in the complex; provided, however, that such Owner will own at least an undivided one-half (1/2) interest in the Condominium Unit;

(b) The transfer or conveyance by operation of law or otherwise of the interest of any Condominium Unit to any other co-owner of the same Condominium Unit, where such co-owners hold title to such Condominium Unit as tenants-in-common or as joint tenants;

(c) The transfer of a deceased Owner's interest to a devisee or devisees by will or to heirs-at-law under intestacy laws;

(d) The transfer of an Owner's interest by treasurer's deed pursuant to a sale for delinquent taxes;

(e) The transfer of all or any 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 persons 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;

(f) 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 (50%) of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the Condominium Unit;

(g) The transfer by gift or by sale to one or more members of the Owner's immediate family, which term is hereby defined to include the grandparents of an Owner or of that Owner's spouse, all descendants of said grandparents and an Owner's spouse.

(h) The transfer of an Owner's interest to a trustee who shall act for the benefit of the Owner making the transfer or such Owner's immediate family as the phrase is defined in (g) above.

If the Owner of a Condominium Unit can establish to the satisfaction of the Managing Agent or the Board of Managers that a proposed transfer is not a sale, then such a transfer shall not be subject to the provisions of Paragraph 33.

35. Certificate of Compliance--Right of First Refusal. As to any Unit subject to Paragraph 33, upon written request of any prospective transferor, purchaser, tenant, or a prospective mortgagee of a Condominium Unit, the Managing Agent or the Association by its secretary shall issue a written and acknowledged certificate in recordable form evidencing that:

(a) With respect to a proposed sale under Paragraph 33, that proper notice was given by the selling Owner and that the Association and the remaining eligible Owners did not elect to exercise their right to purchase;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, a deed from such mortgagee or its nominee, pursuant to Paragraph 33, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 33;

(c) With respect to any contemplated transfer which is not in fact a sale, that the transfer will not be subject to the provisions of Paragraph 33;

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

36. Reserved Voting Rights of Declarant. The exclusive right to vote for the election of members of the Board shall be vested in Declarant and shall terminate as set forth below:

(a) Sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Unit Owners other than the Declarant, one member of the Executive Board shall be elected by Unit Owners other than the Declarant; and

(b) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant, at least two members of the Executive Board must be elected by Unit Owners other than the Declarant; or

(c) Two (2) years from the date of recording of the Covenants, Conditions, and Restrictions this Condominium Declaration; or

(d) Declarant records a notice in writing waiving these reserved rights.

37. Compliance With Colorado Common Interest Ownership Act. To the extent that any term, provision, or condition of this Declaration shall conflict with the requirements of the Colorado Common Interest Ownership Act, the requirements of the Colorado Common Interest Ownership Act shall supersede and control and this Declaration shall be interpreted as though such requirements were set forth herein.

38. Compulsory Arbitration. All controversies, claims, and matters of difference, including all questions as to whether the right to arbitrate any question exists, excepting those matters for which the Covenants, Conditions, and Restrictions and this Declaration specifically provide another method of settlement or enforcement, arising between or among the Owners, the Association, the Board, the Manager, and any agent or committee of the Association or Board, shall be settled by arbitration in Basalt, Colorado, according to the rules and practices of the American Arbitration Association from time to time in force, except that, if such rules and practices shall conflict with the Colorado Rules of Civil Procedure or any other provisions of Colorado law then in force, such Colorado rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. Arbitration may proceed in the absence of either party if proper notice of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such proceedings. Such awards shall be final and binding on all parties to the extent and in the manner provided by the Colorado Rules of Civil Procedure. The costs of arbitration, including reasonable attorneys' fees, shall be borne by the losing party thereto unless the arbitrators specify otherwise. All awards of the arbitrators may be filed with the Clerk of the District Court of Eagle County, Colorado, as a basis for declaratory or other judgment and for the issuance of execution, at the election of the party making such filing, with the Clerk of one or more other courts, state or federal, having jurisdiction over the party against whom such an award is rendered or its property. No party shall be considered in default hereunder during the pendency of arbitration proceedings relating to such default.

39. Successors in Interest. This Declaration shall be binding on and shall inure to the benefit of the Declarant, the Association, and each Owner and the heirs, personal representatives, successors and assigns of each of them.

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

41. Inconsistency. If any of the provisions of this Declaration are inconsistent with any of the provisions of the Covenants, Conditions, and Restrictions of Ute Center Subdivision, the Covenants, Conditions, and Restrictions of Ute Center Subdivision shall prevail.

42. Rule Against Perpetuities. If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of all of the presently registered voters of the City of Aspen, Colorado.

43. Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provision of this Declaration.

44. Certificate of Identity. There shall be recorded, from time to time, a certificate of identity which shall include the addresses of the persons then comprising the management body (directors and officers), together with the identity and address of the Managing Agent. Such certificate shall be conclusive evidence of the information contained therein, in favor of any person relying thereon in good faith, regardless of the time elapsed since the date thereof.

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration this 31st day of August, 2000.

RIVERSIDE PLAZA LOT H, LLC

By ____________________
Manager

738249 09/05/2000 12:15P 134 Sara Fisher
29 of 31 R 155.00 D 0.00 N 0.00 Eagle CO

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing Condominium Declaration was acknowledged before me this 31st day of August, 2000 by Robert D. Ritchie, as Manager of Riverside Plaza Lot H, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 3-9-04

Douglas P. Allen
Notary Public

NOTARY PUBLIC STATE OF COLORADO

738249 09/05/2000 12:15P 134 Sara Fisher
30 of 31 R 155.00 D 0.00 N 0.00 Eagle CO

EXHIBIT "A"

Rules and Regulations for
Riverside Plaza Lot H Condominium

These rules and regulations are subject to change from time to time by a vote of a majority of the Unit Owners.

1. Parking. Parking of any and all vehicles on the Common Interest Community other than in assigned garage spaces shall be only on the paved areas designated for unassigned parking. The Association shall have no responsibility for damage done to automobiles parked on the Common Interest Community. No part of Common Interest Community, including the public streets and driveways or parking areas, unless specifically designated in writing by the Association therefor, shall be used as a parking, storage, display, or accommodation area for any type of trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, truck (other than a pickup truck) or recreational vehicle, except as temporarily necessary for loading, delivery, emergency, etc. However, this restriction shall not restrict trucks or other commercial vehicles which are necessary for the construction or maintenance of the Common Interest Property. Repairing of vehicles on the Common Interest Property is expressly prohibited.

No inoperable vehicles shall be allowed to remain anywhere on the Property. An inoperable vehicle is defined for this purpose as an unregistered vehicle or a vehicle not moved for more than three (3) days.

The provisions of this Paragraph may be specifically enforced by the Town of Basalt as an obligation of the Association. In addition, the Property is subject to the terms and conditions set forth in the Covenants, Conditions, and Restrictions of Ute Center Subdivision and the regulations of the Ute Center Owner's Association.

2. Pets. Only One (1) dog will be allowed in each residential unit, and then only if the dog is quiet and obedient. One (1) domestic house cat will be allowed in each residential unit. One domestic bird will be allowed in each residential unit. Notwithstanding the foregoing, any pet deemed to be a nuisance, in the sole discretion of the Board, shall be required to be disposed of by the Unit Owner. Dogs that excessively bark, or unleashed dogs shall be considered a nuisance. Unit Owners who own dogs shall be assessed Fifty Dollars ($50.00) per month payable to the Condominium Association to defray the additional maintenance costs caused as the result of such ownership. This amount is subject to increase on a case basis at the sole absolute discretion of the Board.

3. Gas Grills. One outdoor gas grill will be permitted on the deck of each residential Unit

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